JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

Set of Memoranda (Nos. 1 to 198)

and

Representations (Nos. 1 to 7)

[Report Presented on 18 November, 1983]

LOK SABHA SECRETARIAT
November 1983/Kartika 1905 (Saka)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

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1.	Shri Surinderpal Singh, Sirsa (Haryana).	1
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3.	Shri Mohan Lal, Accountant, Ludhiana.	3
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JOINT COMMITTEE ON THE MARRIAGE
LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 1

[Comments/suggestions received from
Kumari Kamlesh Sharma, Deep Nagar, Ludhiana.]

(i) That necessity of Divorce is must because the husband cannot give the proof of his wife in adultry in the court.

(ii) Dowry deaths occuring in the country are not dowry deaths. If the Divorce is allowed then no dowry death will occur. When a husband sees his wife in adultry then he cannot give the proof in the court and the husband either commits suicide or kills his wife. When he kills his wife then the parents of the wife complaint that their daughter has been killed by their son-in-law because the son-in-law demanded more dowry and money.

(iii) Most of the husbands are converting themselves into Muslim religion being Hindu for the purpose to get divorce, if the Hindu Marriage Act allows divorce then no Hindu will convert himself to other religion as Muslim.

So on the above mentioned grounds, the divorce should be allowed.

Points regarding maintanence allowance & seperation

(i) According to the Constitution of India every man and woman is enjoying equal rights. Therefore woman should not be entitled to get the maintenence allowance. However, the children may be allowed to get the maintanence allowance.

(ii) Period of seperation should not be more than one year for the ground of divorce.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 2

[Comments/suggestions received from Shri G.S. Pundlik, Nagpur.]

In the Hindu Marriage Act a decree of Divorce is passed by the Court inter alia on the ground of cruelty (Sec.13-1-a) or on the ground of sexual intercourse with other than his/her own spouse (Section 13-1) In this connection I have to state that if a wife commits cruelty against her husband which is a civil-cum-Criminal offence, the judge should not only issue the decree of divorce but should sentence wife for jail which the husband can prove by documentary, circumstancial and concrete evidence, even before or after the decree of Divorce is passed.

As for the wife's sexual intercourse with oth r person than her spouse, the difficulty is that such immoral and illegal acts are performed stealthily and the husband can experience its harmful reaction affecting his interests adversely. In this case a wife must be under surveillance by CID alerting the neighbourhood or plea of duty. This illegal sexual intercourse should be punished by way of jail setence to wife for which I.P.C. 427 be amended suitably. The ife who is a voluntary partner in such illegal intercourse should be sent for Medical Examination against such heinous acts. She also should be examined whether there was any forced abortion with the help of her spouse or otherwise. If found guilty she should be penalized before or after the Decree of Divorce. Section 497 of I.P.C. should be amended as follows:-

The Line "with the consent or connivance of that man" (i.e. husband) should be deleted as it is an affront himself to the manhood of husband and will encourage ife to indulge in such illegal and heinous sexual intercourse. Another sentence from this clause should be deleted :- "In such cases the wife shall not be punishable as an abettor" because it is not "Rape" but voluntary by both the debauches should be punishable to both

wife and the paramour. In many cases it is only woman who spoil the happy conjugal life of a man. In many cases, to suppress her adultery or offences she i.e. wife has deliberately tried to malign her husband as Psychopath against which she must be penalized by the Court.

Medical Termination of the pregnancy should be allowed only if wife conceives from her husband, and if so with the consent of her husband, and not otherwise. Illicit abortions should be punishable to wife.

Whoever gives shelter to such cruel and debauchercus wife, either in the form of service or monetarily or residentially should be penalized.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 3

/Comments/suggestions received from Shri T. Rajaseelan, Housing Unit Colony, College Road, Tirupppur, Tamil Nadu./

Even though fightings are going on in the world on various grounds, there is one fight between the two sexes of males and females about their equal rights and freedom in leading a homely life. The fighting for equal rights and freedom between the two sexes of generation has been going on for ever and till now no definition or thought has been given and arrived at. Every body is speaking about the equal right and freedom but nothing has been done to make the equal rights in the Act and Laws by making suitable and proper amendments to achieve the aim of the constitution which speaks of the equal rights to the citizens.

The constitution of India has made everybody living in India to be equal and to get the equal rights in any walk of life. When that is so, the other Acts and Laws must also be amended in such a way so that everyone living in India should not be prevented to get the relief from the evils done by others. At present the Marriage Act is in such a way which makes the husband a lifelong hard binding slavey to his wife because of the marriage binding and does not allow any relief from that evil. The Act does not provide any way for making the unity of the married couple and if Anyone of the couple goes to the court, the Act and Law leads for the seperation only. This is quite against the object of the homely life and the Dharma Sastras. Further the Marriage Act makes the husband to learn that the muder or suicide is the only way to get the relief from the marriage binding as there is no provision to give relief to the husband either in the form of the restitution of conjugal rights or in the form of Divorce. If there is an Act, there must be some relief to be provided and should not teach and lead to the murder or suicide as a solution to get the relief. If no relief is provided in the Act, that Act is not at all an Act giving natural justice and morality.

Now a days women have got unions or associations for themselves to express their rights and to claim their needs and necessities. They are making wide propaganda about the dowry evil and wanted the marriage to be done without any dowry and not to commit anything for the marriage. At the same time there are no unions or associations for the gents to express their rights and to claim anything they need. When the women want to remove the dowry evil from the social life there is no effort made to remove the maintenance evil which is more binding and killing them that of the dowry. This itself is quite against the theme of the constitution of India giving equal rights to everybody.

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Dowry happens at the time of marriage only but the maintenance evil begins at the time of marriage and continues throughout the life making a hard and killing slavery of the husband to his wife. When the dowry evil which is not so much hurting and killing is to be removed from the social life, is it proper for the maintenance evil which is more and more hard killing than that of dowry to be survived. Dowry evil will automatically be removed when the maintenance evil is also abolished and removed from the Act and Laws. Dowry arises only due to the aspect of maintenance evil provided in the Acts and Laws. It is proper to speak the welfare of the women only by making the prohibtion of dowry evil and not that of the gents by making a moral and legal hard binding slave to his wife. The welfare of the gents must also be looked into when the welfare of the women is to be spoken of so that the gents life should not be spoiled.

By making the Provision of Maintenance of wife in the Act, a moral and legal binding is fixed on the husband to be a lifelong slave to his wife but at the same time no moral and legal binding is fixed for the wife. This itself is a great harm done to the husband in social life. When a moral and legal binding is fixed for the husband there must also be a moral and legal binding for the wife so as to make the woman of nowadays to be good and not to make any evils. As no moral and legal binding is fixed in the Act for the wife and the Act provides for the seperation for everything and no punsihment is given to them, it is possible for the women to do any evil as they like and to escape from the punishment as there is no provision for punishment in the Act.

The conjugal right is the only right that can be had between and within the legal married couple. This right should be protected and should not be refused for simple reasons. The protection of conjugal rights must be the main air and object of the Act. Only for the conjugal right there is the Marriage Act. At present the Marriage Act does not protect the conjugal rights and therefore the Act is not at all an Act of giving moral and natural justice. The Act should be amended in such a way as to give full protection and right for the conjugal happiness between the legal married couple and to give the moral and natural justice in the court.

Further in the code of Criminal Procedure Act, Section 125 defines a wife as "inlcuding a woman who has been divorced by or has obtained a divorce from her husband and has not remarried . This part of definition in itself is quite against the normal and natural justice of the law. By that definition women of nowadays are given place of more freedom in living and do whatever they like and the husband is made to be a slave. The married rights and conjugal happiness came to an end

...3/-

when the divorce is got and what is the necessity of making the women to continue as a wife even after the divorce. There must be some fear in the mind to be made in the present set up of women that they will get nothing if divorce is obtained and then only they will not try for the divorce and give the conjugal rights and married rights to their husbands. Hence the definition should be removed and deleted from the Act to give natural justice in the court.

The Marriage Act must be an Act to give the relief to the husband and to the wife equally when there is a dispute. In the present Act if wife applies for the restitution of conjugal rights or for divorce it is easily given in the courts but when the husband applies for the same it has been refused and the relief is not given when the husband and the wife are not living united by and lead a seperate life having no contacts or communication. If a moral and legal binding is fixed for the wife to give the conugal happiness to her husband and to do the duties and responsibilities of keeping the homely life there will not arise any problem in giving the natural justice and the relief when either the husband or the wife applies for the same. The idea that the murder or suicide is the only solution to get the relief should not be made to arise on anybody's mind. The provisions of the present Act provides indirectly that the murder or suicide is the only solution to get the relief from the Act for the husband as there is no relief to be obtained for the husband and this fact should be removed and abolished completely.

All these written above are for the good welfare of the women and not to do any evils by themselves towards their husbands. If the women's welfare is to be protected it should be made that they should not do evils in social life and there should be a moral fear that they cannot get any relief if they do the wrong thing. By not giving the conjugal happiness to the husband must be made a wrong thing on the part of a wife. Then alone there will be protection for the conjugal rights in the Act.

(E-A)

CONFIDENTIAL

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 3 - SUPPLEMENT

(Comments, suggestions received from Shri T.Raja Seelam, 65, Housing Unit Colony, College Road, South India, Tirappur.)

Beginning with the opinion of the Hindu Marriage Act at present, it is seen and found that the Act protects only the rights and freedom of the wife by making hard and severe clutches of binding on the husband in fixing the moral and legal binding of maintaining his wife as soon as the marriage is done and performed under the prevailing custom and not given any relief to get away from the evils of his wife. No moral and legal binding is fixed on the part of the wife in leading a normal and happy life keeping the object of the marriage. The Act makes the husband a life long slavery to his wife which is contradictory to the thought of equal status in social life. Relief in several kinds and what ever nature is given to the wife but at the same time if a husband sought relief to get away from the evils of his wife, no relief is given and that leads to the result that the murder of his wife or suicide by himself is the only remedy possible at the end. If the Act of law is in such a way that it leads to murder or suicide, then the Act is not a suitable act of giving justice and judgement. The Hindu Marriage Act must be in such a way to protect the rights and freedom of the husband also as well as that of the wife and to protect the sexual relationship between them at what ever cost. With the ambition of setting good judgement in the courts, protecting the rights and freedom of both the husband and wife equally and not to curtail the leading of normal nature of living of the married couple, the amendments should be made suitably in the Hindu Marriage Act and an ordinance is most just in this regard so as not to wait for the time in the procedure of giving effect and to bring them in force immediately for delivering the judgement in the courts justifiably at once.

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Restitution of conjugal rights:

The conjugal rights is the right that can be had within the married couple and not with the others and only for having the conjugal rights legally between them they marry each other making the relation of husband and wife. This conjugal rights is more important in the leading of normal happy life and should be protected at what ever cost

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विवाह विधि- (संशोधन) विधेयक, 1981
संबंधी संयुक्त समिति ।

सेवा में

लोक सभा संसदीय बोर्ड,
नई दिल्ली ।

महोदय,

विषय :- विवाह कानून संशोधन विधेयक, 1981

इस सन्दर्भ में हम बहुत ही उत्सुकता से हाथ बटाना चाहते हैं कि सारी समस्या की जड़ शादी है । यदि इस पर काबू पाया जा सके तो समाज के अन्दर फैली सब बुराइयों को दूर किया जा सकता है । समाज में कुछ वर्ग , ऐसे अच्छादित हैं जिनका कहना है कि हम ही समाज के सर्वे-सर्वा हैं । बिना हमारे कुछ हो ही नहीं सकता है । अत: इन सामाजिक कुरीतियों को जड़ से उखाड़ फेंकने के लिए हम सबको एक बद्ध हो जाना चाहिए और निम्न उपाय करने चाहियें :-

1. अन्तर्जातीय विवाह ।
2. दहेज प्रथा, छुआ-छूत और जाति प्रथा को समाप्त करने के लिए, ब्राह्मण, क्षत्रिय, वैश्य के लिए यह आवश्यक किया जाये कि हिन्दुओं में शादी के लिए हरिजन वर्ग से लड़का और लड़की लेना आवश्यक हो । इस तरह से हरिजनों का विलय हो जायेगा । केवल हिन्दू रह जायेंगे । जिससे जातीय संघर्ष समाप्त हो जायेगा ।
3. हिन्दुओं में शादी आर्य समाज की रीति से होनी चाहिए ।
4. निकटस्थ आर्य समाज मन्दिर में लड़के तथा लड़की के नाम देना चाहिए । जिसमें शैक्षणिक योग्यता उम्र आदि का ब्यौरा पता अंकित होना चाहिए ।
5. कोर्ट मैरिज को प्राथमिकता दी जानी चाहिये ।
6. इन दो नियमों को छोड़कर, शादी के लिये अन्य नियमों पर प्रतिबन्ध लगा देना चाहिए ।
   (अ) 21 वर्ष का लड़का (ब) 18 वर्ष की लड़की होनीचाहिए ।

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for the status of equality in all natures, is it justificable for fixing the moral and legal binding only on the husband and to free the wife from all the clutches of life. Where is the status of equality in the Act. Is it enough that the constitution of India only makes every body equal but not in other Acts that are essential for the people to get the justice in the courts only when the marriage Act envisages the status of equality, then only there will be some meaning for the words of the constitution of India.

At one time in the past, the women have no opportunity of maintaining themselves but now adays the circumstances and conditions are changed so as to get full opportunities for women to have education in all subjects and to compete in the jobs opportunities and earn by themselves for maintaining. Thus to that extent the men are loosing the opportunities of earing as they are not able to get the jobs easily. But the Act is kept of the past and not amended accordingly to the changes of circumstances. What is the necessity of the husband to maintain his wife who is able to earn and maintain herself.

Fur-ther in the Criminal Procedure Code, the wife has been defined in section 125 as follows:

> "wife includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried".

This is a harm killing nature of definition and has to be deleted. The Act must be in such a way to teach moral and loyal in the judgements. But this definition leads a woman immoral and disloyal towards her husband because it does not create any moral fear in her mind and makes her to escape in doing the duties and responsibilities of the homely life. The Act must create a fear in the minds of woman so as not to do a wrong thing. Now because of the provisons of the definition, the women are very much bold and give very much trouble to their husbands What is the necessity to maintain a woman who is not living with the husband. If the woman wants to be maintained by her husband she should live with her husband by whatever means and should not be separated. The objects of the husband and wife to live together should be the main object of the Act and not to encourage for the separation. As the definition encourages for separation, it should be deleted from the Criminal Procedure Act.

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The word wife is a relation to the husband to give conjugal rights mainly and to live together in the leading of normal life. There should not be any encouragement to a wife who refuses to give the conjugal rights and to live with her husband, By means of the maintenance awards in the courts. The provision of separation of life should be deleted fromthe Act unless otherwise divorced.

Divorce:

Divorce is a provision made in the Act for those who are not living together and has no chances to join so as to remove the bindings they had of the marriage. This section is more important in the aspect of giving relief of removing the binding of marriage rights. The relief to be obtained in the aspect should be easy and should not create any untoward problem.

The present provision is that the husband is not able to get the relief easily from the court and the judgements delivered refuses to give the relief. This it self leads that it is not possible to get relief in the law at courts and the solution is only the murder of the wife or suicide by himself. There must be some relief to be provided in the Act for the irretrievable cases and should not create any hard restrictions to get the relief. If a wife fails to live with her husband for a long time i.e. more than two years and no efforts made by herself to live with her husband. The divorce should be given to the husband. Then only there should create some moral fear in the wife to make some effects to live with her husband normally so as not be divorced. But at present no such effort has been made because the sections of the Act and the definition encourages for the separation but not provided for the relief of the binding of the marriage by divorce.

Because Divorce relief is not easily given to the husband when sought for in the court, he has to do some other ways or other methods not to say so as to protect the non legal one who is loyal to him in living. There is no communication or contact of cohabitation between the legal ones because of the separation, the husband is punished by the law itself by making not to live with her. This type of position should not be in the Act. To clearly say, there should not be any provision for the separation of life until there is a divorce and then only we can expect some moral life in the homely field and can prevent the evils done by the woman.

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Finally coming to the end, it is suggested to amend the act suitably bringing to above facts immediately so as to have the equal rights for husband also as that of the wife and not to curtail the peaceful living of the homely field. If it is not possible to bring the Amended Act in force immediately it is preferable to make an ordinance so that to make the effect immediatly in the courts to give the proper judgements and justice. The delay in bringing the amendments and make the act in force will make more and more hardship in social life and affect so many people not to get the good justice in the court of law.

If an opportunity is given in person to explain fully in this behalf it is much better to make my expressions clearly on these matters so as to give a clear picture. Hope to receive the same early and expect favourable amendments in the act to eradicate the evils done by the woman as a wife to her husband as it is more and more important now-a-days of social life..

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 4

/ Comments/suggestions received from Giani Sadhu Singh (Retd. Teacher) Pohen Road, Ludhiana. /

1. Under Article 14 of Indian Constitution, it provides equal rights for Men & Women. Therefore Divorced woman should not be entitled to claim the maintenence allowance. However the children may be allowed to get maintenance allowance in a Lump sum or monthly till the divorced woman remarries 1/5th of the income of the man is sufficient for this purpose.

2. Woman enjoys right to divorce her husband after one year of separation in the event of refusal of the husband as mentioned in 125 Cr.P.C. or she herself can give the divorce to her husband on the basis of cruelty as mentioned under Sec. 13 of "The Hindu Marriage Act, 1955". These rights should also be provided to the husband.

3. If the husband has been paying maintenence allowance for more than one year he may be allowed to get divorce.

4. If the above mentioned amendments are made then the Hindus & Sikhs will not convert themselves to other relicions like Muslims etc. for the purpose of divorce.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 5

[Comments/suggestions received from Shri Prakash Thaker, Satish Mukherjee Road, Calcutta.]

"In the event of a married couple living separately for three years or more, then if either spouse has lived on his or her own means and without any maintenance or financial assistance being provided by the other spouse then any claim for maintenance, alimony or compensation of any kind during or after divorce proceedings should not be considered at all by the court."

Presently the law which is heavily ~~ladden~~ in favour of women is being taken undue advantage of by women, of even rich families who are not interested in continuing with their marriage, in extorting maintenance allowance from their helpless husbands.

Therefore if the above is incorporated in the Bill then it will not be possible for women to go on with this malpractice which is causing untold hardship to countless men who are presently paying through their noses for the crime of being jilted by their wives.

In the present age where women enjoy equal rights and opportunities in all spheres of life, any existing bias against either sex in our laws, especially marriage laws, should be removed as quickly as possible.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 6

[Comments/suggestions received from Shri G.Pitchaimuthu, Cauverynagar P.O. 622501, Pudukkottai Dt.]

At the outset, I wish to state that the Hindu Marriage Act in force is not in accordance with the Hindu culture. According to the existing Act, one can marry only one wife and he cannot dispense with her, even though she is found unfit for leading a family life; whereas, in Muslim community they are permitted to marry one or more wives upto four by presenting their case in their attached Mosque with religious concurrence. When such is the case, the Hindus also will be tempted to join Muslim community, because of the restriction imposed by the Hindu Marriage Act and I have my own doubt that everybody i.e Hindus who are dejected with life will adopt Muslim community in course of time and I think that this Hindu Marriage Act should not be a reason for this.

Even according to Ancient principles, princes of different states of this country (i.e. before merger) and the well-to-do people were having 2/3 wives depending upon their status and nothing prevented them by doing so; strictly speaking in the Puranas and Ithikasams of Hindu culture we find even the Gods Mahavishnu, Lord Muruga and Siva were having two wives.

There is nothing wrong in permitting a person to marry more than one wife when his present wife is affected by any disease and there is no satisfaction in family life between each of them; but the presnet law does not permit him to take a decision and marry another wife and he has to seek legal remedy by cumbersome process under court of law. Certain person does not want to expose his family matter by proceeding under court of law and he decides to sacrifice his life thinking himself about his fate.

In view of this, I think the Government should consider deeply into the matter and necessary amendments be made in the Hindu Marriage Act giving provisions to everybody to marry more wives depending upon his status and the health conditions of the other sex. According to Hinduism our elders did not divorce their wives on any account of health conditions and any other family reasons such as 'no issues' no self satisfaction etc., and at the same time protecting the previous wives also till their death. By doing so, we can prevent family quarrels, murders, raping, starving and the difficulties by the parents due to Varadakshina.

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Original received in Hindi
English Summary

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO.7

[Comments/suggestions received from Avikelyuker, Nagpur _7

The present social and political atmosphere is vitiated by caste hatered, unemployment, economic disparity and ostentatious life style. Our social values have changed and our moral values have declined. Man has become selfish and a slave of his passion and desires. He has become irresponsible to the extent of deserting his partner in the hope of getting a new one.

Therefore divorce if it is must, be obtained with prior permission of the elders in the family. It must also be ensured that a near relative of the seperated wife is able to undertake the responsibility of the women and her children. Their custody should not be entrusted to only third party. In view of this divorce should be granted by no less a court than a High Court after going through all implications from religion and moral angles.

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विवाह शादी और घटस्फोट

शादी यह दुल्हा और दुल्हन का जीवन सुख चैन और निरोगी तंदुरुस्त संतान और वंश, वारस चालू रखने के लिये और कुटुंब संस्था में आराम व सुख शांति बढाने के लिये उनके माँ बाप रिश्तेदार पाठवु और उनकी भलाई चाहने वाले अपने अड़ोस पडोस के पहिचानेल और भिन्न परिवार को आमंत्रित करेके खान पान के पुल्त में एक शुभो का भी समारेभ में को जाति है । शिपय इसके धार्मिक भाषा से उनके जिवन में उनको आत्मा के उद्धार का भी ज्ञान मोक्ष के लिये और उच्च नित्तोमत्ता आदर्श और सहकार्य विवाह परस्पर शर्तों के बंधन में एक कर्तव्य को भावना में बढ़ाया जाता है और उन पर संसार की जिम्मेदारी सौंपी जाती है । विवाह के पहिने उनके आपसी स्वभाव कुटुंब परिवार इनका अभ्यास लड़की देने वाले और उसे शादी करवाने वाले लड़के के बुजुर्ग परस्पर करते हैं । उसके पश्चात ही आर्थिक लेन देन जो जिवन सहायता आवश्यक हो कुछ दोनों पक्ष में मान्यता प्राप्त त्य होकर सबके राय से होती है ।

आज के नये युग वर्तमान परिस्थितियों में देश का वातावरण कुछ उटपटांग, राजकारण जन्य संख्या घटना, जातिद्वेष उच्च नीच भावना धर्म जाति नष्ट करने के हेतु बेकारी, और आर्थिक अनावस्था नीतिमत्ता की गीरी हुई हालत, लड़कीयों पर वासनात्मक विध्यात्मक नजर, दिखावट ठसबाजी कोर्ट की, स्पेशल मैरेज की सुभीता और बिना कोई पाठ्य माँ बाप को पूछे अपने स्वतंत्र बुद्धि से बिना आगे पीछे सोचे समझे केवल क्षणिक भावना आकर्षण और क्षणिक स्वार्थ बुद्धी से उसके भारी परिणाम और जिम्मेदारी को न देखते सीधे शादी कर लेना भाई के लोग और पाठवु और सब चाहे तब जहाँ कुछ जिम्मेदारी आती है या अनबन होती है या कोई दूसरा या दूसरी पार्टनर मिलती है तो एकसे छुटकारा पाने के लिये लड़के परस्पर झटागोरीमिह/यन्होर्न-घटस्फोट लेना और छोड़ देना अपने जिम्मेदारी से अलग हो जाना जितना आसान है उतना ही

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अपने पार्टनर को अंत में दुखना उसका जिवन नष्ट भ्रष्ट करना, उसको मारती है तो मारती के भावी जिवन और उत्कर्ष को भी नष्ट करना है ।

इसलिये घटस्फोट करना-या डायवर्स लेना है तो उनके बुजुर्गों, पाटवु, मां बा, और परिवार की सम्मती से ही लेना चाहिये और घटस्फोट लेने के पश्चात वह लड़की है, तो उसके और उसके संतान की पालन पोषण व्यवस्था की जिम्मेदारी लेने वाला उस लड़की का माता पित्ता या वंश संबंधित उसका रक्षण भरपाई से, करने वाला लेखी कराई करार करके जिम्मेदार हो न कि कोई तिसरा स्वार्थी रोजगारी व्यापारी या पार्टी का राजकारण हेतु जिसके द्वारा भविष्य में उस लड़की का भविष्य कोई किसी नेता द्वारा ठगी जीवन में व्यतित हो ऐसा नहीं होना चाहिये । इस उद्देश्य से घटस्फोट- डायवोर्स का आदेश निःपक्षपाती हायकोर्ट के बेंच के सामने उनके द्वारा धर्म परंपरा और कानून से सोचने पर ही दिया जावे और प्रथम गांव के पंचायत के सामने निश्चित हो ।

दिनांक 28·12·81

अखिलेश्वर

नागपूर

(13)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 8

[Comments/suggestions received from Chander Prabha Sood, Teacher, Tarn Taran, Amritsar.]

Most respectfully, I may state that it is a welcome step to introduce irretrievable break-down of marriage as a ground for divorce.

Marriage becomes meaningless if husband and wife live in separation for more than two years. The very separation for such a long period of time bears eloquent testimony to this fact that their estrangement is complete. Reluctant heads must not remain yoked together.

The introduction of this new ground for divorce is the need of the hour and it will curb many evils connected with maladjustment.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 9

[Comments/suggestions received from Shri Sakattar Singh Sidhu, Baorian (Amritsar), Punjab.]

In my view, prolonged separation between couples should be considered a basis for divorce. It has been noticed that couples live apart for years together but they fail to seek divorce because of the rigid present legal system. The very fact both husband and wife lived in separation for more than two years bears an eloquent testimony to this fact that their estrangement is complete and irreparable. Therefore, prolonged separation must be made basis for divorce if justice is to be meted out to persons concerned.

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(15)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 10

[Comments/suggestions received from Shri Laxmi Narain Sharma, V & P.O. Samode, Distt. Jaipur (Rajasthan).]

1. If a spouse (husband & wife) remains three years separately on account of their misunderstanding or any reason whatsoever, the period of three years may be considered good for granting a decree of divorce on the ground of irretreivable breakdown of marriage. After they remain separate for three years or over, it would not be practicable to live together under one roof and they cannot live happily. Hence they may be granted decree of divorce on the ground of "irretrievable break-down of marriage".

2. The expenses of child/children must be borne by the husband if wife is not an earning member till they become major.

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(16)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 11

[Comments/suggestions received from Shri Parkash Singh Arora, Maqbool Road, Amritsar.]

Marriages according to Indian tradition are determined in Heaven but in some of the cases the devil does interfere in this heavenly affair and makes life hellish. Present law about divorce is so complicated and one-sided that the male spouse can hardly get divorce if the other party is determined to follow the policy of 'Not to live and let not to live other'. When both the parties live separately for years, it creates problems for the individuals concerned as well as for society - frustration and sexual anarchy. Therefore, for healthy society and balanced individuals, I strongly support the idea of making divorce law more comprehensive. It must consider prolonged separation as irretrievable break-down, irrespective of the fact whether it is legal separation or ordinary one.

(17)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 12

[Comments/suggestions received from Shri Dilbag Singh Sandhu, Lecturer, Baba Budha College, Amritsar.]

It has been noticed that some couples have been living in separation for years but the law of the land does not consider this prolonged separation as a basis for divorce. In my view this prolonged separation should be considered irretrievable break-down of marriage and divorce should be granted so that social and religious evils may not creep into society. The existing law takes years to operate and the parties concerned, suffer for longer periods before getting justice. Therefore the law should be streamlined to provide justice at the earliest.

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(18)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 13

[Comments/suggestions received from Shri S.L. Khandelwal, Jaipur.]

The decree of divorce on the irretrievable break-down of marriage may be allowed after a period of three years if the parties remain separate because the affected parties may start their new married life in their middle age. If this is done, interested party may enjoy his/her remaining life with a sense of happiness.

As regards children, the expenses upto graduation may be borne by 75% by the applicant for divorce and remaining be spent by the respondent.

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(19)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE
LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 14

[Comments/suggestions received
from Shri Krishna Chandra Majumdar & 3 others
Asansol, Burdwan.]

Law is always progressive. The present Hindu Marriage Act is not upto the requirements of the society. The amendment proposed regarding divorce is highly beneficial to the Hindu Society.

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(20)

CONFIDENTIAL

Joint Committee on the Marriage Laws (Amendment) Bill, 1981

(Original received in Hindi English Summary)

MEMORANDUM NO. 15

[Comments/suggestions received from Shri Hanuman Sahai Sharma, Gram Jaisinghpura Khor, Jaipur (Rajasthan)]

In my view, if any of the spouse is living separately for 3 years or more than for whatever reasons, and either of them applies for divorce, they should be allowed divorce on the grounds of 'Marriage broken beyond repair'. Unreconcilable Marriage is a delicate relation. Once there is a rift it is not possible to mend it. The differences become wider with the passage of time. I therefore, suggest that such married couples who are legally married but have been living separately for years, should be allowed divorce after three years, so that the willing party or both the parties may lead rest of their lives peacefully.

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विवाह कानून (संशोधन) विधेयक, 1980 संबंधी संयुक्त समिति ।

जयसिंहपुरा

MEMORANDUM NO.15 5 जनवरी, 1982

सेवा में,

श्रीमान सचिव महोदय,

लोकसभा,

संसद भवन एनेक्स

नई दिल्ली

महोदय,

मुझे किन्हीं सूत्रों से ज्ञात हुआ है कि सरकार ने "विवाह कानून" में संशोधन करने के विचार से एक संसद की विशेष समिति बनाई है जो इस बारे जनता से विचार एकत्र करके अपनी सिफारिश देगी । इस बारे में, मैं आपको अपने विचार भेज रहा हूं ।

मेरे विचार में अगर पति-पत्नी 3 साल या इससे अधिक किन्हीं कारणों से अलग रह लेते हैं और इनमें से कोई भी तलाक मांगता है तो उन्हें "असाध्य रूप से शादी टूटी हुई मानकर" तलाक दे देना चाहिए । क्योंकि शादी एक बहुत ही नाजुक बन्धन है । और अगर इसमें एक बार दरार पड़ जाती है तो उसको भरना असंभव है । बल्कि यह दरार समय के गुजरने के साथ-साथ खाई बन जाता है जिसको कभी पाटा नहीं जा सकता । इसलिए मेरे विचार ऐसे विवाहित जोड़े जो कहने को तो "शादी-शुदा" हैं परन्तु वो वर्षों से अलग रह रहे हों उनको 3 साल बाद कानूनन तलाक दे देना चाहिए जिससे इच्छुक पक्ष या दोनों पक्ष अपनी बची हुई जिन्दगी को आराम से बिता सकें ।

धन्यवाद,

भवदीय,

(हनुमान सहाय शर्मा)

ग्राम जयसिंहपुरा खोर, पो॰आ॰जो॰पी॰ओ॰

जयपुर (राज॰)

(22)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 16

[Comments/suggestions received from Bibhuti Sekhar Majumdar, Secretary, Khandegharh, Village Society and Shri Satyendranath Bhaumik, Advocate_7

The present Hindu marriage Act is not upto the needs on the present Hindu Society. It requires thorough amendments. We welcome the proposed amendments and we suggest that the period of non-cohabitation should be reduced to 2 years and not 3 years as proposed. Divorce should be easily obtained and trial should be expedited.

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(23)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 17

/ Comments/suggestions received from Nanda Krishna Mazumdar and others, village - Durgapur, Burdwan. /

We welcome, the proposed Amendment of the Hindu Marriage Act by the Bill introduced in the Lok Sabha with regard to Divorce. It will be beneficial to the Hindu Community. Provision for expeditious trial is necessary and there should not be more than one appeal.

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(24)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 18

(Comments/suggestions received from Shri Hari Shanker Deo, 1, Bindal Park, Dehradun Cant.)

A long time back, Hindus could keep any number of wives at a time. Now a Hindu can marry only one at a time. Since plural marriages have been banned, divorce should be made easier. Everyone should have the right to marital happiness. Thus if a marriage fails both should be able to try again freely.

At present, due to overburdened courts, a young man seeking divorce usually gets it when he's old. Justice delayed is justice denied was never more true. The reasons behind marital breakdowns are many but the legally admissible grounds are few. No two cases are the same. The grounds are vauge. Marriage being a private affair, proofs are difficult to get. Besides not everyone likes to wash dirty linen in public and become the victim of gossip and scandal. What constitutes cruelty etc. may vary from judge to judge. With the delays, numerous appeals etc., a nasty minded wife or husband can make divorce a painful experience or even impossible. After driving one's legally wedded partner to the vagaries of the courts, it is strange that the person is further allowed to use the legal process to further harass and torture, in order to prevent the divorce seeker from seeking the sort of marital bliss, a second time, which the former was unable to provide.

The whole idea that only women suffer and to leave it to the sweet will of the wife to decide whether the husband should get a divorce seems unjust. Nobody marries to divorce, but sometimes, there is no alternative.

Advisability of making irretrievable breakdown of marriage as a good ground for grant of divorce and the period to be considered sufficient to prove the same:-

People marry to live together. If they have stopped living together for 3 years or more, it means

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the marriage has ended. To expect reconciliation in such cases is ridiculous. In such cases divorce should be automatic. No further proofs, agruments, should be necessary.

The question whether the presence of children should operate as a bar to the grant of a decree of divorce on the ground of irretrievable breakdown of marriage and whether the ground should be absolute or partial:- After a long time, a sensible, modern amendment was to be introduced, to bring quick relief to those affected. It is 1982 but views are still being invited regarding the amendment named the Marriage Laws Amendment Bill, 1981. Three years seperation should be sufficient proof that the marriage has ended irretrievably and the divorce granted immediately. Three years without a normal family life is suffering enough. Further period of seperation should not be insisted upon. Also three years seperation should be made an absolute ground for divorce, Any qualification to this amendment will render the aims and objectives of this proposed Bill useless and only increase the scope of further litigation which this Bill seeks to avoid. With divorce made easier, crimes against wives will also decrease. There have been cases of divorce lingering in the courts for 20 years. There is a crying need to de-mystify the whole process of marriage and divorce. With most marriages in this country being arranged, two perfect strangers are expected to live happily for a lifetime. Marriage should be a free association of two people for the pursuit of happiness. Divorce still carries a stigma and the passage of this Bill will not lead to a divorce-spree. Unless this Bill is passed without further delay and amendments, millions of unhappily married people will continue to suffer all their lives. Let me once again remind those concerned about the reasons behind the necessity of bringing forward this amendment:-

1. To grant quick relief.
2. To avoid endless litigation
3. To obviate the need to wash dirty linen in public.

One wonders how anyone can object to the above laudable aims of the Bill? Therefore, it is hoped and prayed that this Bill is passed in the coming session of Parliament so that relief may be granted to countless sufferers to whom it is the only ray of hope.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 19

/ Comments/suggestions received from Mahila Aghadi of the Bharatiya Janata Party, Bombay Unit, Kathak Bhavan, Dadhasaheb Phalke Marg, Dadar, Bombay. /

If husband and wife are not able to stay happily together and if it is not possible for them to pull on together, then they can make themselves free from the wedlock tie instead of torturing each other.

I am of the opinion that while passing decree of divorce on the ground of irretrievable breakdown of marriage, the Judge should consider whether it is the ground given by both the sides. I have come across cases in which husband filed a petition for divorce and his Advocate pleased before the court that it is not possible for his client to stay with his wife, he has no love for her. The ground in the petition was given mental cruelty but in reality he was in love with one lady and that is why he wanted divorce. Under such circumstances there is no fault on the part of his wife, inspite of that, I observed that some Judges advise the wife that if the husband does not like to stay with you, when he has no love for you, why do you compell him to stay with or impose your company. Under such circumstances, if wife is illiterate, her position becomes worst because as a divorcee she has no status in parents' house as well as in society. The maintenance which is granted by the court is not sufficient for her. In these circumstances, before passing decree of divorce, the court should direct the husband to provide his wife house and maintenance. The wife should not be neglected.

Secondly, when there are issues (children) of the marriage and both husband and wife want custody of them, there is dilemma and it is very difficult to take a decision. I have seen some children they want both the parents but as the father and mother are not on good terms, the children have to suffer. In such circumstances, the court should not consider only the future of the spouses but the court has to think over about the future of the children.

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Regarding the period of separation before the court come to conclusion of irretrievable breakdown of marriage, I think instead of period, the court should consider about their views about each other as well as their married life. Immediately after marriage if they found that it is impossible for them to stay together or to lead a married life, instead of wasting time for time-limit, it is better to take decision as early as possible.

The presence of children should not be a bar to the grant of divorce. If children are major, this problem will not arise. If they are minor and attached to both the parents, the court should handle such matters not only from the point of view of the husband and wife but should think over about the future of the children also.

Even both the husband and wife come to the conclusion that it is impossible for them to stay together and lead marital life and they come before the court for decree of divorce, then the court should first try for reconciliation. If the court finds that the parties are grown up and because of the breakdown of marriage, the children are likely to be affected badly, then in these circumstances the divorce should not be granted even if irretrievable breakdown of the marriage is established.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 20

Comments/suggestions received from General Secretary, National Federation of Indian Women, New Delhi.

The National Federation of Indian Women (NFIW) is totally opposed to the proposed amendments to the Hindu Marriage Act, 1955 and Special Marriage Act, 1954 to make "Irretrievable Breakdown of Marriage" a basis for divorce.

This was discussed very thoroughly in the all India Council meeting of the NFIW held at Bombay on 28th, 29th and 30th December, 1981 and attended by 108 members from all states of India.

The main clause which is sought to be inserted in the two existing laws is - "The Court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition."

This means that, if the husband and wife do not live together, in the same house, for a period of three years that can be a basis for divorce.

The NFIW thinks that this amendment will generally go against the interests of women. In case a man decides to desert his wife, he has to only live separate from her for three years. This is not at all difficult for him in the present situation of our families.

(1) In our country very large number of men from rural areas go to towns for employment leaving their wives behind in the villages. In this situation if a man gets involved with a woman in the town and does not go back to the village for three years, he can easily divorce his wife.

(2) A man get transferred some-where and simply does not call his wife to join him for three years. Basis for divorce is readily available.

(3) If a man is intent on procuring a divorce he can send his wife to her parents' house and not call her back for three years.

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Such possibilities can be multiplied a hundred times. The point we want to underline here is that, in our present day social set up, the proposed amendment will largely benefit men and go against the interests of women.

(B) It is being propagated by some supporters of this amendment, that it will not affect the poor and illiterate woman who are generally governed by the laws of their castes and communities. This is a completely wrong statement. Our units in nearly all states of India are taking up the cases of women who are victims of social oppression, such as dowry, wife beating, desertions etc. They are providing them legal aid also our experience is that it is the lower middle-class and poor sections of women, in rural as well as urban areas who are now revolting against ill-treatment and humilation and coming for help to the women's organisations.

(C) The proposed bill has a provision that the husband will have to provide maintenance for the wife and dependent children if she has no means of income. But, a wife does not only need money, she needs a status and security in life which husband provides to her. Maintenance is not an adequate compensation for a deserted wife. In our society a deserted wife is humilated at every step, particularly, if she is young she has to face many difficulties.

(D) This amendment is no improvement on the existing marriage laws which include divorce by mutual consent.

(E) The Government or the Parliament have not reviewed till now, the working of the existing laws, their impact on women, and the hurdles in the way of their proper implementation. It will be very wrong to introduce such a major amendment - to make divorce easy - in the present laws without reviewing the situation thoroughly.

The N.F.I.W. urges the Joint Committee not to accept the proposed amendment, this may help a few upper-middle class women but will do much injustice to the mass of women.

It is possible that there are some vindictive husbands who do not give divorce to their wives just to torture them but this is not the general phenomenon.

It is our experience that in case husband and wife do not get along, men are most anxious to get a divorce and re-marry.

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There can be no ideal law for marriages, some people are bound to mis-use any existing law. But the effort has to be have such laws which protect the maximum number of persons belonging to the weaker sections. I am sure the Select Committee will keep this principle in consideration while discussing this amendment.

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CONFIDENTIAL

(Original received in Hindi)
Summary in English

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 21

Comments/suggestions received from Shri Baldan Singh, 6 Ratan Halder Lane, Liluwa, Howrah (W.B).

What are the reasons for divorce and how can it be prevented? Analysing the reasons for divorce it will be seen that when there is no emotional rapport between husband and wife and there is a difference of opinion between the two which goes on widening and they prove to the satisfaction of the court that they are now unable to live together they get a divorce.

Concept of marriage should be changed with the march of times. When there is no rapport in the ideas and thoughts of the two partners it is better that they should go apart and divorce. Marriage is basically a union of two persons. It should not be related to a particular religion of culture. The conception that a woman can develop relation with one man only should be removed. Women should be more liberal in their approach and outlook even if this violates their age old sentiments. Therefore divorce should be allowed where necessary.

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विवाह कानून(संशोधन)विधेयक, 1981 संबंधी संयुक्त समिति

अदन सिंह
5, रतन हलदर लेन लिलुआ
हावड़ा, पं बंगाल

महिला दक्षता समिति
द्वारा : सचिव लोक सभा सदन भवन
नयी दिल्ली

विषय : तलाक क्यों होती है और उसे रोकने के उपाय क्या हैं ?

महोदय/ महोदया,

अखबार में यह पढ़कर खुशी हुई कि सरकार तलाक की समस्या पर जनता के विचार भी जान लेना चाहती है । काश देश की हर समस्या के लिए देशवासियों के विचार जानने की कोशिश करती तो शायद देश में अभी इतनी समस्याएं नहीं होती । खैर ! छोड़ो उसे

महिला या पुरुष , उनको यह मानना ही पड़ेगा कि नारी और पुरुष दोनों प्रकृति की अमूल्य निधि हैं तथा यह भी मानना ही पड़ेगा कि एक दूसरे के पूरक हैं , एक दूसरे के बिना जीवन निर्वाह करना कठिन, असंभव भी है । दोनों प्राणियों को एक साथ जीवन भर ... रहना है । आपसी आकर्षण भी एक प्राकृतिक प्रगति है । इसी को एक आकर्षण के वशीभूत किशोर-किशोरी आपस में छेड़खानी भी करते हैं पर वर्तमान समाज के साठ सालों के उम्र वाले लोग उसे अवारागर्दी, गुंडापन और न जाने क्या-क्या कहते हैं ।

विवाह एक ऐसा मिलन है जो आत्मा से होकर शारीरिक सम्बन्धों में गुजर कर मृत्युपर्यन्त ही खत्म होता है जिसे समाज की सहज हर्ष स्वीकृति होती है और जिसे समाज स्वीकृति न दे उसे अनैतिक सम्बन्ध कहा जाता है ।

तलाक भी उसे कह सकते हैं जिसमें पति पत्नी का भावनात्मक सम्बन्ध टूट जाता है यानी दोनों के आपसी विचार मेल नहीं खाते तो अदालत में यह साबित करते हैं कि अब समाज में तो स्वीकृति विधानों के अनुसार एकबद्ध होकर नहीं रह सकते । अलग-अलग रहने की समाज की स्वीकृति (यहां अदालत) भी समाज का अंग है । को तलाक कहेंगे ।

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को तलाक में कई कारण हो सकते हैं । जैसे पति का दूसरी की स्त्री की तरफ आकर्षित होना तथा अन्य कारण जैसे बच्चा न होना . दहेज कम लाना मूलत: एक दूसरे से सहमत न होना सटीक परिभाषा है और । जो भी हो सब जानते हैं । समय परिवर्तनशील होता है समय के साथ युग बदले युगों के साथ रीति रिवाज कानून मान्यताएं, बदलती जा रही हैं और आगे भी बदलेंगी ठीक उसी हिसाब विवाह अथवा स्त्री पुरुष के साथ रहने के तरीके बदले हैं जैसे पहले सामाजिक स्वीकृति ही काफी थी दोनों पक्ष वालों के सहमत होने से ही लड़के लड़की जिन्दगी भर वचन निभाते थे । कभी आपसी फूट पट को सड़क पर नहीं लाया जाता था पर अब शिक्षा के बढ़ते प्रचार ने स्त्रियों को स्वतन्त्रता का अहसास तो हुआ पर अपनी प्राकृतिक स्थिति के बारे में वे एक दम अनभिज्ञ हैं । विवाह अदालती होने लगे तो विच्छेद भी अदालत में ही होना है ।

तलाक से सम्बन्धित बुराई में दोषी है बड़ी उम्र के लोग । स्त्रियां तथा धर्म और उसके नेता तथा समाज में भारतीयता का लगाव तथा पूरी तरह से राजनेता और उनकी अधकचरी नीतियां पूंजीवादी अर्थव्यवस्था ।

सरकार और समाज को चाहिए कि मानी मानवीय जीवन में धर्म और ईश्वर का कोई महत्व नहीं । ऐसी स्वस्थ परम्परा विकसित करें कि बचपन से लेकर बुढापे तक स्त्रियों में जैसी स्कूल में लड़के व लड़कियों को समझाया जाये कि प्रकृति ने उन्हें एक दूजे लिए बनाया है आपसी आकर्षण भी प्राकृतिक है, छेड़खानी चुहल एक प्राकृतिक लक्षण है जीवन भर साथ साथ रहना है एक दूसरे से सहयोग करके जीवन को सुखमय बनाने के लिए अनुभव प्राप्त करें आपसी व्यवहार शक्तिअथवा असुरक्षिता के दायरे में न लें । शारीरिक संबंधों धर्म या पाप जैसे न देखें बल्कि यह खेल या आनन्द का ही एक भाग कहें जिस तरह भाभी देवर, जीजा साली की चुहल मजाक मान्य मानते हैं उसी तरह साथी प्रेमपूर्ण सम्बन्ध रखें ॥ एक दूसरे को समझने की शिक्षा ग्रहण करें तो कई जटिल समस्याएं अपने आप सुलझ जायेंगी ।

समय के साथ साथ सब कुछ बदल रहा है विवाह को सिर्फ शारीरिक संबंध के लिए ही न समझें बल्कि इसे विचारों का संगम कहें । जब एक दूसरे के विचार मिलें तो साथ साथ रहें विचारों में मेल न खायें तो अलग अलग रहने में बुरा न समझें ।

विवाह को धर्म या भारतीयता का रूप न दें बल्कि उसे मानवीय आधार पर दो प्राणियों के मिलन की संज्ञा दें तलाक को कदापि नहीं रोका जाना चाहिए क्योंकि तलाक ज्यादा होंगी तो पूरे भारतीय समाज में एकरूपता आ जायेगी स्त्रियों को यह धारणा मन से निकाल देनी चाहिए कि एक पुरुष का सिर्फ एक स्त्री से सम्बन्ध होना चाहिये या एक स्त्री सिर्फ एक पुरुष से ही सम्बन्ध जोड़ सकती है बल्कि लोकतन्त्र में सबको सबसे मिलने की पूर्ण स्वतंत्रता होनी चाहिये चाहे भारतीय समाज के प्रतिकूल क्यों न हों बल्कि मानवीय आधार और भावनात्मक अवश्य हो ।

अन्त में मैं कहूंगा कि जो पति व पत्नी तलाक लेते हैं (जिनके अभी बच्चा नहीं या होने की संभावना नहीं है) तो उनकी सम्पत्ति बराबर बांटी जाये और यदि बच्चा है तो उनकी सम्पूर्ण धन सम्पत्ति बच्चों को मिलनी चाहिए क्योंकि तलाक का असर बच्चों पर ज्यादा पड़ता है ।

सरकार को देश किसी प्रकार की समस्या की ओर ध्यान नहीं देना चाहिए क्योंकि भारत में (किसी भी देश) मूल समस्या आर्थिक है आर्थिक समस्याकी मूल जड़ असमानता है हर क्षेत्र में, असमानता धीरे धीरे नहीं मिटेगी, मिटेगी अध्यादेश से, अध्यादेश लागू होगा शक्ति से , शक्ति माना सैनिक शासन, ऐलान भारत में सब स्त्री पुरुष बराबर है समान अधिकार हैं एक समान शिक्षा के, सम्पत्ति रखने , एक समान आय-व्यय करने के अधिकार हैं तो एक समस्याएं पैदा नहीं होंगी ।

एक दफे नेताजी सुभाष ने कहा था भारत को स्वतंत्रता के बाद 20 वर्ष तक सैनिक शासन के अन्तर्गत रहना चाहिये जिससे देश बाकी अनुशासन में रहना सीख लें परन्तु तत्कालीन अपनी नेता दूरदर्शिता को न समझ सके और अपने को हीरो बनने के चक्कर देश को अग्नि समस्याओं के बीच में डाल दिया आज जो स्थिति बरकरार है आगे घेरा हट जाने की संभावना बिल्कुल नहीं है

अजय सिंह

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(12)

CONFIDENTIAL

(ORIGINAL RECEIVED IN HINDI)
(SUMMARY IN ENGLISH)

MEMORANDUM NO. 22

Comments/suggestions received from Shri Mahesh Kumar Singh, V.S.S.D. Degree College, Nawabganj, Kanpur

We should unite to remove these social evils and take the following steps therefor:

1. Inter-caste Marriages.

2. To eradicate dowry, untouchability and caste system it should be made obligatory for every Brahmin, Kshatriya and Vaish to marry a harijan girl and vice-versa. Then all shall become Hindus and there shall be no caste confrontation.

3. Marriages among Hindus should be performed in Arya Samaj way.

4. Names, educational qualifications and age of the boys and girls should be registered in the nearest Arya Samaj Mandir.

5. Preference should be given to the Court Marriages.

6. All other forms of marriage except these two, should be prohibited.

   Marriagable age of boy should be 21 years and the girl 18 years.

7. To help this form of marriage to continue, Arya Samaj Mandirs should be constructed everywhere.

8. Government should encourage Arya Samaj for this purpose and give grant to it so that Hindu Dharma could be established.

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विवाह विधि (संशोधन) विधेयक, 1981
संबंधी संयुक्त समिति ।

सेवा में

लोक सभा सचिवालय,
नई दिल्ली ।

महोदय,

विषय :- विवाह कानून संशोधन विधेयक, 1981

इस सन्दर्भ में हम बहुत ही उत्सुकता से हाथ बंटाना चाहते हैं कि सारी समस्या की जड़ शादी है । यदि इस पर काबू पाया जा सके तो समाज के अन्दर फैली सब बुराइयों को दूर किया जा सकता है । समाज में कुछ वर्ग, ऐसे अच्छादित हैं जिनका कहना है कि हम ही समाज के सर्वे-सर्वा हैं । बिना हमारे कुछ हो ही नहीं सकता है । अत: इन सामाजिक कुरीतियों को जड़ से उखाड़ फेंकने के लिए हम सबको एक बद्ध हो जाना चाहिए और निम्न उपाय करने चाहियें :-

1. अन्तर्जातीय विवाह ।
2. दहेज प्रथा, छुआ-छूत और जाति प्रथा को समाप्त करने के लिए, ब्राह्मण, क्षत्रिय, वैश्य के लिए यह आवश्यक किया जाये कि हिन्दुओं में शादी के लिए हरिजन वर्ग से लड़का और लड़की लेना आवश्यक हो । इस तरह से हरिजनों का विलय हो जायेगा । केवल हिन्दू रह जायेंगे । जिससे जातीय संघर्ष समाप्त हो जायेगा ।
3. हिन्दुओं में शादी आर्य समाज की रीति से होनी चाहिए ।
4. निकटस्थ आर्य समाज मन्दिर में लड़के तथा लड़की के नाम देना चाहिए । जिसमें शैक्षणिक योग्यता उम्र आदि का ब्यौरा पता अंकित होना चाहिए ।
5. कोर्ट मैरिज को प्राथमिकता दी जानी चाहिये ।
6. इन दो नियमों को छोड़कर, शादी के लिये अन्य नियमों पर प्रतिबन्ध लगा देना चाहिए ।
(अ) 21 वर्ष का लड़का (ब) 18 वर्ष की लड़की होनीचाहिए ।

(37) (14)

7. स्थायी रूप से देश में जगह-जगह आर्य समाज मन्दिर बनने चाहिये जिससे यह प्रथा हमेशा चालू रहे ।

8. इस कार्य को करने के लिए, सरकार को आर्य समाज को प्रोत्साहित तथा अनुदान देना चाहिये । जिससे भारत में हिन्दू धर्म की स्थापना हो सके । जिस तरह से लोक सभा और विधान सभा के बूथ बनाये जाते हैं उसी तरह से आर्य समाज के विवाह मण्डप बनवाये जायें और प्रेमपूर्वक इच्छानुसार युवकों तथा युवतियों के विवाह कराकर मधुर सम्बन्ध स्थापित किये जायें । मधुर संबंध बिगड़ जाने पर जीवन भर लड़की को गुजारे की रकम मिलनी चाहिए या इच्छानुसार दोनों को द्वितीय विवाह करने की अनुमति देनी चाहिए ।

धन्यवाद ।

भवदीय,

दिनांक 15.1.82

महेश कुमार सिंह
स्नातक छात्र द्वितीय वर्ष
बी.एस.एस.डी. डिग्री कालेज,
नवाबगंज, कानपुर ।

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CONFIDENTIAL

(ORIGINAL RECEIVED IN HINDI)
(SUMMARY IN ENGLISH)

JOINT COMMITTEE ON THE MARRIAGES LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 23

Comments/suggestions received from Shri Ram Chandra, Chhabil Das Ram Chandra, 13 Nehru Market, Hissar (Harayana).

Irretrievable breakdown of marriage should necessarily be accepted as a valid reason for divorce. To prove this judicial separation of two years is sufficient. If during these two years they live together for two months, it should not be considered against the plea for separation. If wife and husband start living separately with-in one year of their marriage, the period of one year of separation should be sufficient for this purpose. If they have children one or more then this period should be made three years. If petition regarding restitution of conjugal rights is awareded in favour of wife or husband and it is not put into practice then the concerned person has right to move the court for divorce. Wife or husband, if deserted for a period of one year (at present this period is two years) he or she should have right to apply for divorce. There should be separate special courts/family courts for the purpose of marriage and divorce and these courts should/directed to dispose off a case within a period of six months.

Registration of marriage should be made compulsory and at the time of Registration both wife and husband should be asked to submit an affidavit to the effect that there was no dowry taken or given.

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विवाह विधि- (संशोधन) विधेयक, 1981
संबंधी संयुक्त समिति ।

16.1.82

प्रेषक :

राम चन्द्र,
छबीलदास रामचन्द्र,
13- नेहरू मार्किट,
हिसार (हरियाणा)

सेवा में

सचिव महोदय,
लोक सभा सचिवालय,
नई दिल्ली ।

विषय : विवाह कानून संशोधन विधेयक के बारे में विचार ।

श्री मान् जी,

सविनय निवेदन यह है कि अंग्रेजी दैनिक "दी हिन्दुस्तान टाईम्ज" दिनांक 28.12.81 के एक आरटिकल " लास्ट वीक इन पार्लियामेंट " के अनुसार उपरोक्त संशोधन बिल से सम्बन्धित संसद की संयुक्त समिति ने, इस संशोधन बिल के बारे में आम जनता के विचार मांगे हैं । इस विषय पर मैं काफी समय से विचार करता आ रहा हूं एवं ऐसे कई व्यक्तियों से मैंने विचार विमर्श किया है जो कि इस संशोधन बिल से संबंध रखने वाली समस्याओं का सामना कर रहे थे । मेरे विचार निम्नलिखित हैं :-

1- इरीट्रीवेबल ब्रेक डाउन आफ मैरीज को तलाक देने के लिये एक अच्छा व पर्याप्त आधार (कारण) जरूर माना जाना चाहिए ।

2- (क) इसे प्रमाणित करने के लिये 2 वर्ष (पति पत्नी का अलग रहना) पर्याप्त है ।

(ख) इन दो वर्षों में अगर (अधिक से अधिक) 2 मास (लगातार) इकट्ठे भी रहे हों तो भी लगातार दो वर्ष अलग रहे हैं, ऐसा माना जाना चाहिए ।

(ब) यदि विवाह के एक वर्ष के भीतर ही पति-पत्नी अलग रहना शुरू कर देते हैं तो यह अवधि अलग रहने की एक वर्ष ही पर्याप्त है ।

3- यदि (एक या अधिक) बच्चे हों तो यह अवधि तीन वर्ष होनी चाहिए ।

4- यदि पति या पत्नी (किसी) के हक में रेस्टीच्यूटन आफ कंजूगल राइट्स (सेक्शन आफ हिंदू मैरीज एक्स 1955) का दावा निर्णीत हो जाये व छः माह (वर्तमान नियमानुसार एक वर्ष है) तब उस पर अमल न होतो संबंधित व्यक्तियों को तलाक का दावा करने का अधिकार होना चाहिये ।

5- (पति या पत्नी) कोई एक, दूसरे को एक वर्ष (वर्तमान कानून के अनुसार 2 वर्ष है) तक डेसर्ट करे तो डेसर्टिड व्यक्ति को तलाक का दाव करने का अधिकार होना चाहिये ।

6- (क) विवाह) एवं तलाक आदि) से संबंधित दावों के लिये विशेष अदालतें (स्पेशल कोर्टस/ फेमिली कोर्टस) होनी चाहिए जो केवल यही दावे निपटायें ।

(ख) इन अदालतों को यह निर्देश होना चाहिये कि दावा छः माह से पहले निपटा दिया जाये ।

7- (क) विवाह का पंजीकरण आवश्यक होना चाहिये ।

(ख) पंजीकरण के समय यह आवश्यक हो कि पति व पत्नी दोनों अपना-अपना हल्फनामा दें कि यह विवाह दहेज रहित था ।

उपरोक्त व्यवस्थायें दहेज उन्मूलन में भी सहायक सिद्ध हो सकती हैं ।

समाचार पत्र में संयुक्त समिति का पता नहीं दिया गया था । अतः निम्न निवेदन है कि आप मेरे यह विचार, संबंधित संयुक्त संसदीय समिति को भिजवाने की व्यवस्था करने का कष्ट करें ।

आपकी अति कृपा होगी । सधन्यवाद .....

भवदीय ,

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 24

Comments/suggestions received from
Shri Krishan Datt 'Soz', President,
Sahit Sabha, Tarn Taran, Amritsar (Punjab)

With the decay of the notion of sin in modern times, sexual virtue has become a thing of the past. Now when a Juliet flirts with every handsome Romeo she meets, the sacred aspect of Hindu Marriage cannot be upheld on rational grounds. Where does this sacredness go when one of the aggrieved partners embraces Islam and marries another person.

A healthy society consists of balanced individuals and individuals can never be sound mentally if their conjugal life is marred by prolonged separation or estrangement. Mostly it so happens that one of the spouses adopts a dog-in-the manger policy and it results in ruin of both the spouses.

Marriage loses its sanctity as well as meaning if both husband and wife live in separation from each other for a period of three years on account of strained relations. No other evidence is required to prove that their estrangement is complete and irreperable. The very separation for such a long period bears an eloquent testimony to this fact that their strained relations have reached a point of no return. One need not emphasise the obvious that separation is separation and it hardly matters whether this separation bears the legal stamp or not.

It should be clearly understood that prolonged separation which results in complete abstinance from sex, is likely to produce nervous disorders and may make one grudging and ill-tempered type of character. If a man or woman is young and vigorous, it is not in public interest to say: You must undergo complete abstinence from sex.

...2/-

Three-year separation as ground for divorce will certainly act as an effective check on many social and moral evils connected with mal-adjustment.

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CONFIDENTIAL (20)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 25

Comments suggestions received from Shri J.N. Jhunjhunwala, 64, Pathuriaghat Street, Calcutta-700006

The recommendation of Law Commission in it's report has recommended insertion of a new section in the existing marriage law under which a petition for dissolution of a marriage by decree of divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

However, the court will not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of atleast one year immediately preceeding the presentation of the petition, in place of 3 years.

The case in respect of the matrimonials should be disposed off within a maximum period of one year from the date of the filing of the case.

After passing the decree of divorce, the spouses should be allowed to remarry immediately.

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CONFIDENTIAL

(ORIGINAL RECEIVED IN HINDI)
(ENGLISH SUMMARY)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 26.

Comments/suggestions received from Rama Nand of Patna

Shri Rama Nand of Patna has put forward the following suggestions on Marriage Laws (Amendment) Bill, 1981.

Orthodox and traditional Indian Customs regarding Marriage should be abolished.

A period of six months should be given to husband and wife intending to seek divorce to make adjustment between them. It this fails then both should be allowed to remarry of their choice. Forcing them to unite through law would not be effective. The law only can be helpful in the event of wife not remarrying after separation by fixing a monthly allowance for her sustenance.

The question of children should not come in the way of granting permission to divorce. It must be ensured before-hand whether the child wants to live with his father or mother or whether father or mother is in a position to give full protection to the child. If both do not want to own the responsibility of children then the Government should come forward and make arrangement for a 'Home' for them and provide them education etc.

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कानून द्वारा निर्धारण नहीं किया जा सकता । कानून द्वारा सम्बन्ध निर्धारण नहीं किया जा सकता । अगर किया जाता है परिणाम कभी भी घातक सिद्ध होगा । आप ही सोचें, कानून इस सम्बन्ध में दया कर सकता है ? या तो बल प्रयोग द्वारा या निश्चित राशि देकर उन्हें जोड़ने का प्रयास किया जायेगा । क्या ऐसा प्रयोग उनमें मधुरता ला सकेगा ? कदापि नहीं । अत: इस सम्बन्ध में पुनर्विवाह ही समस्या का समाधान हो सकता है । अन्यथा परिणाम घातक होंगे ऐसी मेरी मान्यता है । कानून द्वारा एक काम अवश्य ही किया जा सकता है ; वह है वियोग की स्थिति में पत्नी द्वारा दूसरा विवाह नहीं किये जाने पर सरकार द्वारा उन्हें भरण-पोषण के लिये पर्याप्त मासिक भत्ता मिलना चाहिये ।

प्रश्न 2 - क्या बच्चों के कारण तलाक की अनुमति में कोई बाधा आनी चाहिये ?

उत्तर -- बच्चों के कारण तलाक की अनुमति में बाधा नहीं आनी चाहिये । यह भी भावप्रधान प्रश्न है । यह आपसी समझौते का प्रश्न है । तलाक आने के पूर्व बच्चों की भावनाओं की भी कद्र करनी होगी। यह सुनिश्चित किया जाये कि बच्चे मां के साथ रहना चाहते हैं अथवा पिता के साथ । फिर इस प्रश्न पर भी विचार किया जाना चाहिये कि पिता अथवा मां उन्हें पूर्ण संरक्षण देंगे । इन दोनों पहलुओं को ध्यान में रखकर बच्चों की जिम्मेदारी से छुटा जा सकता है । तलाक में बाधा आने का प्रश्न ही नहीं उठता है । अगर इन दोनों में कोई भी बच्चों को संरक्षण देना नहीं चाहता तो सरकार यह जिम्मेदारी अपने ऊपर ले ले और इन बच्चों को समुचित शिक्षा और विशेष शिविर आवास की व्यवस्था करें । जहां तक मासूम बच्चे का प्रश्न है वह तो तलाक के पश्चात भी मां के साथ ही रहेगा । अगर मां को इन्हें पालने में कोई आपत्ति है तो सरकार द्वारा बनाये गये शिविर आवास में इनका लालन-पालन धाइयों द्वारा कराया जाना चाहिये । अत: मेरी समझ से बच्चों के कारण तलाक में कोई बाधा नहीं आनी चाहिये ।

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पुनश्च :-

सच पूछा जाय तो दोनों ही प्रश्न जो हमारे सामने पेचीदी समस्याओं के रूप में उभर कर आये हैं, कोई नया नहीं है । इनकी जड़ में सेक्स छिपा है । भारत में सेक्स के प्रति कटुता ही इन समस्याओं को जन्म दे रही है । इस सम्बन्ध में भारत आरम्भ से ही अन्ध-विश्वासी बना हुआ है । आज संसार के तमाम राष्ट्र शिक्षा, विज्ञान और तकनीकी के मामले में पुरानी मान्यताओं को ताक पर रखकर विकास की ओर अग्रसर हो रहे हैं, परन्तु भारत "सेक्स" के नाम पर अनगिणत समस्याओं को जन्म दे रहा है । सेक्स के नाम पर कटुता पनप रही है ; हत्या और आत्म-हत्या हो रही है । अत: इन्हें रोकने के लिये सेक्सी दकियानूसी विचारों से ऊपर उठने की अत्यन्त आवश्यकता है । सेक्स को हमने जितना ढकने की कोशिश की, उतना ही विस्फोटक होता जा रहा है । अत: इन दो समस्याओं से निबटने के लिये सेक्स के मामले में विदेशों में प्रचलित नियमों को आंशिक रूप से अपनाना होगा ।

मेरा तो विचार है सेक्स का आकर्षण विकर्षण में बदलने के लिये उसे खुला छोड़ देने की आवश्यकता है ।

आप ही सोचें यह कितना दकियानूसी ख्याल है कि अगर पति किसी अन्य स्त्री से सम्बन्ध बना ले तो पत्नी आत्म-हत्या कर लेगी । अगर पत्नी गलती से ही सही, किसी पुरुष के चंगुल में पड़कर भ्रष्ट हो जाये तो पति उसकी हत्या कर देता है । इतना अगर नहीं हुआ तो कटुता तो अवश्य ही आयेगी । और अन्त में पति-पत्नी में सम्बन्ध विच्छेद हो जायेगा । फिर तलाक की नौबत आयगी और बच्चों का भविष्य अन्धकारमय हो जाएगा । अत: इन बुराइयों से निबटने के लिये सेक्स के प्रति पुरानी मान्यताओं को बदलना होगा ।

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संसार में कई ऐसे देश हैं, द्वीप हैं जहां नग्नता कोई विशेष महत्व नहीं रखता और वहां सेक्स के नाम पर कोई जघन्य अपराध भी नहीं होता । वहां बलात्कार नहीं होता ; वहां औरतों को बेचा नहीं जाता । इसलिये कि वहां सेक्स आकर्षण की वस्तु नहीं रह जाता । किन्तु भारत में बलात्कार होता है और सेक्स के नाम पर कटुता और नग्नता होती है । इसलिये शिक्षा-पद्धति में सेक्स शामिल किया जाये । चलचित्रों में नग्नता प्रदर्शित किया जाये ताकि सेक्स का आकर्षण विकर्षण में बदल जाये ।

CONFIDENTIAL (49)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 27

Comments/suggestions received from Dr. B.L. Manocha, Medical Practitioner, Chandigarh-160022

The Present Marriage Act already has provisions for divorce on fault-basis or by mutual consent. The Marriage Laws (Amendment) 1981 (hereafter called 'The Bill) widens the scope by incorporating another provision for irretrievable marriages,

Obviously the best judges for pronouncing a marriage to be irretrievable would be the husband and the wife. But the egoistic fight between them or ulterior motive of one of the parties would blur their discerning mental faculty. As the World Health Organisation has defined, "health is not only the absence of sickness or disease, but also physical, mental and social well-being ....." Fighting spouses (or atleast one from fighting couple) can decisively be regarded as sick persons/s.

The concept and factum of irretrievable marriages, as envisaged in the bill, may be accepted/amended to cover the following:-

i) When the parties have lived apart for 2½ years, irretrievability may be concluded. (This span of 2½ years is one year more than the optimal period of foreign countries).

Ii) The Court processes, thereafter, must be minimised to six months so that the total span in the break-up does not exceed three years.

iii) In a decree of divorce, the dowry be made returnable to the wife.

iv) If the litigation between husband and wife (may it be for maintenance allowance/ divorce) in any court or courts has already crossed 3/4/5/6 years irretrievability of such a marriage may be taken for granted. A decree of divorce together with an order for maintenance allowance where-ever necessary may be ordered in the first hearing after the bill is passed. No further appeal against the decree of divorce in such cases may be allowed.

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CONFIDENTIAL

JOINT COMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

Comments/suggestions received from Shri Krishna Chandra Majumdar, Vill.& P.O. Sanxari, Distt. Burdwan.

MEMORANDUM NO. 28

The intending amendment or the Hindi Marriage Act, regarding divorce is welcome to the Hindu Society. It will remove a long-felt want. Divorce should be easily obtained. The period of non-cohabitation should be reduced to 2 years.

In pending cases regarding divorce or judicial separation, the proposed amendment should be so provided, that the petition of the petitioner or objection of the opposite party, may by amendment or their respective petitioner objections, take the advantage of this proposed amendment to avoid multiplicity of suits and harassment.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 29

[Comments/suggestions received from Shri Babalal, Khajurao Ka Rasta, Chand Pole Bazar, Jaipur]

I have heard that Government is considering to amend the Hindu Marriage Act on the ground of irretrievable, breakdown of marriage. In my opinion, the period of three years, separation of a spouse is considered advisable for the purpose of divorce. This has also been considered advisable by the law commission in its 71 report. As regards children the view taken by the cabinet during the last January may be treated valid.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1961.

MEMORANDUM NO. 30

Comments/suggestions received from Smt. Darshan Kaur, Kuldip Nagar, Ludhiana.

India's ancient law-giver 'MANU' had laid down that woman should be considered as a gift to man and man must treat her with care. This conception is no longer valid now that the constitution grants equal rights to men and women. When the law provides for Divorce on western lines, one fails to understand why it is not implemented in its true spirit in the country.

The law commission in its 71st report recommended that Hindu marriage should be dissolved on the ground of an 'IRRETRIEVABLE BREAKDOWN'. But at the seminar held in Chandigarh recently in which Chief Justice of India Mr. Chanderchud presided over that seminar and the opinions were expressed that seperation - Judicial OR otherwise - should not be regarded as a conclusive evidence that the marriage has irretrievably broken down and it should be left to the Judge to give a verdict.

This will defeat its very purpose on two grounds. First whether one ad its it or not even Judges are subject to influence these days. Secondly in case, the Judge is to decide the issue of an irretrievable breakdown then one of the two parties which is more interested in Divorce will hurl filthy charges.

Divorce is opposed on the ground that the wife who in most cases is unemployed, will suffer and may become a burden to the society. If, however society is not more important than the individual, why should the individual suffer in the name of society?

To save wives from financial ruin the Government should initiate a marriage insurance policy. When the government can spend colossal sum of money for the Asian Games and the Colour T.V. project why cannot something be done for the welfare of women who are the victims of unhappy marriages. Unfortunately, everything in the country is seen from a political angle. None at the Chandigarh Seminar said that it is not always the wife who suffers but also the husband in the same manner. Instead of it suggestions have been made that the husband's property

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should be given to the wife at the time of Divorce if need be. The marriage law is already tilted against men. It will not, therefore, be worthwhile to extend more favours to women.

Divorce is always better than wife burning or committing suicide by the husband. So your goodself is requested to impress the Govt. of India that the Hindu Marriage Act, 1955 should be amended and divorce should be allowed. Lacs of the cases of marriage disputes are pending in the courts of India for 4-5-6-7 years for want of divorce.

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CONFIDENTIAL (5)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 31

Comments/suggestions received from Shri Randhir Singh Chahal, Village Mankheri, Teh. Malenkotla, Punjab

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It is felt that the existing divorce law is so complicated and one sided that the male partner can hardly get divorce if the other party is determined to follow a dog-in-the-monger policy. With the disappearance of the motion of sin in the present age, the sacred aspect of hindu marriage cannot be upheld on rational grounds. When both the parties live separately for years, it creates problems for the individuals concerned as well as for society.

There is no denying the fact that prolonged separation which results in complete abstinence from sex, is likely to produce nervious disorders. Moreover, it is not in public interest to say to a healthy man or woman: 'You must undergo complete abstinence from sex'. This kind of attitude is an open invitation to the person concerned to throw off all moral restraints.

Divorce should be permitted at the request of either party if both husband and wife live in separation for more than three years due to strained relations. Separation fo such a long period bears testimony to this fact that their strained relations have reached a point of no return. It may be pointed out that separation is separation whether it bears a stamp of legality or not.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 32

Comments/suggestions received from Shri Naval Kishore Rathore, Sanganer, Jaipur.

My views on the subject, as sought for by you, are that this amendment be brought as early as possible and the period of 3 to 4 years would be sufficient to prove irretrievable break down of marriage. There are many spouses who are living separately for long period and now they could not live jointly.

If the lady has child/children, their cases may be decided by the Hon'ble Judge on the merits of each individual case.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL,1981.

MEMORANDUM NO. 33

Comments/suggestions received from
Shri Balkar Singh, Principal's Office,
Baba Budha College, Bir Sahib (Thatta),
Amritsar

I may be allowed to express my views regarding the pending amendment of divorce law. It is in public interest to introduce three-year ordinary separation of the partners as a ground for divorce. With the decay of the notion of sin in modern times, sexual virtue has become a thing of the past. Now when a Juliet flirts with every handsome Romeo she meets, the sacred aspect of hindu marriage cannot be upheld on rational grounds. Where does this sacredness go when one of the aggrieved partners embraces Islam and marries another person. Fire, according to Hindu Tradition is also sacred, but this very fire plays havoc when it catches fire. Similarly maladjustment is like a burning house and our law-makers should not play the flute like Nero of Rome by remaining silent spectators of this house on fire. To keep pace with the march of time, divorce laws should be made easier and divorce be permitted at the request of either party.

A healthy society consists of balanced individuals and individuals can never be sound mentally if their conjugal life is marred by prolonged separation of estrangement. Mostly, it so happens that one of the spouses adopts a dog-in-the-manger policy and it results in ruin of both the spouses. Marriage becomes meaningless if both husband and wife live in separation from each other for a period of three years on account of strained relations. No other evidence is required to establish that their estragement is complete and irreparable. The very fact that both the spouses lived in separation for such a long period is in itself an irrefutable proof of irretrievable breakdown. One need not accentuate the obvious that separation is separation and it hardly matters whether it bears the stamp of legality or not.

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It should be clearly understood that prolonged separation which results in complete abstinence from sex, is likely to produce nervous disorders and may make one grudging and ill-tempered type of character. If a man or woman is young and vigorous, it is not in public interest to say: "you must undergo complete abstinence from sex."

Three-year separation as ground for divorce will certainly act as an effective check on many social evils connected with maladjustment.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 34

Comments/suggestions received from Shri Sukhdev Singh, M.Phil student, History Department, G.N.D.U., Amritsar

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I may express my views regarding the introduction of a new ground for divorce. Marriage loses its sanctity and meaning if both the spouses live in separation for more than three years on account of strained relations. The very fact that both the partners lived in separation for such a long period is in itself an irrefutable evidence of irretrievable breakdown. What is the fun of keeping two spouses under the same yoke if they lead an estranged life?

To keep pace with the march of time, divorce laws should be made easier and divorce be permitted at the request of either party. Divorce should be granted at the request of either party. Divorce should be granted at the request of either party if it is proved that both, husband and wife, lived in separation for three years regardless of the fact whether this separation is legal or not. Frustrated individuals create problems for society - sexual anarchy, war of nerves, never-ending litigation and enmity which sometime results in murders.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 35

Comments/suggestions received from
Shri R.C. Malhan, C-179, Moti Bagh(South),
NEW DELHI.

It has become difficult to find the marriages successful these days. Just after the marriage the unemployed/employed wives, with the help of their parents, without assigning any reasons, run away with all their valuables and refuse to repatriate to their husbands on one pretext or the other. They refute false and baseless charges of demanding dowry and make cruelty charges on them and against the family members of their husbands. In this way a large number of cases are received in the courts from various parties.

In case of unemployed half of the income of the husband is attached as the maintenance etc. for the wife's parents. In case of employed, the wives put very stiff terms and conditions, which cannot be met by a husband at any cost. The employed wives also keep male child with them and ask for some sort of ransom as maintenace and litigation charges.

In case of even a great fault on the part of wife a husband is also on the mercy of his wife and cannot get rid of her. These are the clear cut cases of cheating, asking for ransom and case of torture mentally for somebody, which is equal to murdering assult on someone after marriage in both the cases. However, a number of suggestions are given below:

1. Period of separation may not exceed more than 6 months.

2. In case of fault on the part of wife no financial benefits be given to her and the whole burden should be on the wife side.

3. The child may be restored to the father even in case the child is only of two years old or less than this.

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4. Decision of 'Restitution of Conjugal Right' may not be prolonged and it must be decided within the period of six months or so.

It is requested that Hindu Marriage Act of 1954 be amended in such a way that none of the parties can blackmail each other. It is hoped that the authorities will look into the matter and will make suitable amendments in the Act of marriage, in order to remove evils and to improve socialism amongst the people.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

SUPPLEMENTARY TO MEMORANDUM NO.S-35

Comments/suggestions received from Shri R.C. Malhan, C-179, Moti Bagh (South), New Delhi.

One of the tragic facts of modern Indian Society is the gradual disintegration of the institution of marriage. Marriage as a sacrament has lost is pristine validity and there is an increasing tendency not to honour marital obligations. There are increasing number of cases where immediately after marriage employed/unemployed wives, instigated by their parents or actuated by malice desert their husbands and, to add insult to injury decamp with valuables in their houses. In order to hide their crime they heap false charges of cruelty against their husbands and family members and cruelty charge has become a handy weapon of blackmail.

The law, as it exists now, does not adequately safeguard the legitimate interests of the affected party. As a matter of fact, the odds are heavily stacked against men; only the women being traditionally regarded as deserving of sympathy and consideration. The law relating to maintenance deals a crippling blow to the husband already under the traumatic shock caused by desertion. Similarly the law relating to custody of the child is not entirely fair to the husband.

In order that their husbands also receive justice under maintenance law I would like to make the following suggestions:

1) The statutory period of separation should be reduced to six months.

2) In case it is prima facie evident that the wife has not honoured her obligations, she should not be entitled to any maintenance.

3) In case it is prima facie evident that the wife is incompetent or incapable of affording sufficient protection to the child the husband should be given the custody of the child even if he/she is a minor. It is important to delete the inherent assumption in the marriage law that it is only the mother and not the father who can be expected to give proper care to the child.

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4) Courts must expeditiously (in no case not exceeding six months) pass their decree on restitution of congugal rights.

The above suggestions would go a long way in bringing about parity between men and women and thus vindicate the principle that in the scales of law all equal.

CONFIDENTIAL (14) (63)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 36

Comments/suggestions received from Shri S.C. Madan, 206, 15-A, Chandigarh

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Now a days, the things regarding marriage are going in a 'so called' abnormal and bad manner. All of us read in the News Papers daily that a certain lady has committed suicide or she has been forced to do so because of the demand of dowry by her-in-laws to which they could not meet or so. And we also read that a person has changed his religion and has embraced Islam so as to come out of the jam or bound of marriage which is virtually unbreakable under Hindu Marriage Act, 1955. If we analyse the real causes behind such problems, mishappenings of the time which have become a menancing problem, we come to the conclusion that now with the development of education and civilized society every person has started to attach more values to his rights and the decency. With the advent of civilization persons are more alert and aware to the rights, as they have started to go away with the traditional views regarding marriage and divorce. If we look to the H.M.A. 1955 we see that uptill now it lays more stress upon the marriage as a sacrement than that anything else. Now with the change of society and its attitude, it is the need of the time not to consider the marriage as a sacrament. It is wholly a obsolete view and the people have started feeling frustration from them.

Everybody knows that our divorce laws are too traditional and rigid that if unluckily a person once is involved in that, he is only released from this bound when his heirs have grown white and that also after so many years of harrassment meted out to him by our rigid and lengthy procedures with a heavy financial burden thereupon. These type of things create a type of frustration among the individuals and the society thereto and is a cause of the real problems as discussed above. Now it is the high time that we should realize the situation and should change ourselves according to the need of the time and their society and should make such laws which are best suited for the welfare of the individuals and the society thereof.

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I am not of the views that the laws should be made too liberal as that will also create a problem, but where ever the genuine causes seem to be there that the marriage cannot be sustained, we must be prompt to give relief to them and should do our every possible endeavour to make them happy, to feel unburdened and the society thereof. Very wisely the Hindu Marriage (Amendment) Bill 1981 has been placed before the Joint Committee of Parliament which is considering upon its various implications and very wisely it is considering to introduce the break down theory as a ground for divorce.

Break down theory of divorce :- Now the need of the society, today is to go ahead to provide a irretrievable ground of divorce. When the relations of the spouses are estranged to such an extent that to retrieve from that stage is all together impossible then there is no sense in retaining such types of marriages which have proved totally a failure. On the other hand by retaining such marriage which is virtually a failure, will lead to further estrangement of relations among the spouses and many hardships to them and thus the frustration. A healthy society is that where the individual comprising the same or themselves healthy and are beyond any tinge of frustration. If we provide such ground for divorce we shall be giving a type of indications to every person to behave with his spouse in a decent way otherwise the later will be free to go away from him. Such type of notions, surely will compel the spouses to always do the better and to have a good sense of regard to others. We should not always, continue experimenting upon such spouses keeping that they will improve and the break down of marriage be avoided. In 95% cases this does not happen and if at all it succeeds, it succeeds at the time when hairs of the both the persons go while. As such, the time when they are required to be united passes away. Hence there is no sense to retain such marriage which have gone totally a failure. It Has rightly been said that 'Justice Delayed is Justice Denied'. Although the break down referred above may not be a break down simpliciter but the irretrievable break down of marriage.

TIME PERIOD

Although in such type of cases the court should look into the circumstances and should decide the matter of the irretrievable of break down. I may add that 3 years of separation period as recommended in the Hindu Marriage (Amendment) Bill, 1981 to the Joint Committee as a irretrievable ground for divorce is too much. It should be a liberal one i.e. one year only. As it is an accepted fact that once you go to the court

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prove that your marriage has broken down and that you are living separate from the other spouse for the stipulated period you require atleast 2 years to prove this fact and in my views the period for which the proceedings go on, can be construed as the period of separation alongwith the one year separation period, if no reconciliation is there. Moreover, false pleas are taken by the defending lawyers and the dates are sought on one pretext or the other. The harrassment meted out to the persons, so went to the courts by its long, lengthy and traditional procedures and the delay in providing the relief thereof is apart from the financial loss which breaks their back. Hence if we see, practically, how many persons succeed to get divorce? The number is very very few and much of them drop the cases to avoid from such difficulties said above and the lack of financial sources and pass their remaining life as such without any charm in their life increasing thereby a sort of frustration among the society. Hence in my opinion the separation period be incorporated as one year instead of 3 years.

Section 24 of Hindu Marriage Act (Maintenance Pendentelite) - Section 24 of H.M.A. provides maintenance Pendentelite and the litigation expenses to the party who is not earning, as a fair trial proposition. But it has been seen that such enactment which was envisaged as a fair trial proposition is generally misutilised. Oftenly wrong pleas are taken with the intention of extracting the money from the other parties. Such type of cases give rise to unnecessary litigation. Moreover, such cases are not decided quickly, as the lawyers seek dates on one pretext or the other. Such malpractices, makes the sprit envisaged as futile. And it has been seen that in such cases, judges provide too much maintenance pendentelite which becomes unbearable in most of the cases and is thus not a fair proposition. Hence the steps must be taken to curb such practices and we must make laws accordingly.

FAMILY COURTS. :- The best answer to curb such malpractices and to decide the matrimonial cases in a most fair and efficient manner is the establishment of family courts. These courts must be established at district level and must be presided over by two district judges (Division Bench). The services of a psychotherapist or a sociologist can also be utilised in these courts to solve some psychological or sociological problems and the main object of these courts will be just to cure such sociological problems which are just like a disease. Of course, the

proceedings may be held in-camera. The pre-adjudication and pre-counselling advices should also be imparted freely.

Such courts will be exclusively dealing with the matrimonial cases and the every endeavour should be put to decide such cases in a quick and efficient way. There should lie only one appeal and second appeal should be allowed whether it may be on point of fact or point of law.

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CONFIDENTIAL (12)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 37

Comments/suggestions received from All India Women's Conference, Patna Branch, Patna.

1. Advisability of making irretrievable breakdown of marriage as a good ground for grant of decree of divorce and the period considered sufficient to prove the same.

A. Irretrievable breakdown of marriage should be made a good ground for grant of decree of divorce and the period to prove the same should be two years minimum to prove the same.

This would enable both the partners specially the women to be able to start her life afresh and save her from continued social humiliation if the breakdown of marriage is allowed to be suffered by for longer period. Her continued suspense for more than two years would be great hardship and even preclude any possibility of her rehabilitating herself in life and look to any future.

B. Whether the presence of children should operate as a bar to the grant of a decree of divorce on the ground of irretrievable breakdown of marriage and should the bar be absolute or partial.

Presence of children should not operate as a bar to the grant of a decree of divorce provided -

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(a) The custody of child/children. If any minor, are given to the mother unless she specifically expresses her desire not to have it

and

(b) Maintenance grant for the children are paid to her till the children get employed or married or the age of 25 whichever is earlier.

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CONFIDENTIAL

ORIGINAL IN HINDI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 38

Comments/suggestions received from Shri Sharda Prasad Shastrik, Pondi, Distt. Shahdol, Madhya Pradesh

All marriages should be registered and the age of bride and bridegroom should not be less than 20 and 18 years respectively at the time of marriage. Number of guests at marriage ceremony should be limited to 11 only to avoid wasteful expenditure. In case the couple do not get a child within five years of marriage they should be allowed to divorce. The practice of dowry should be abolished altogether. At the time of divorce, the party, if he has received any dowry, should be asked to return all the dowry received at the time of marriage with an interest at the rate of 5% before he is granted a divorce.

/separate. No couple who have children, should be allowed to divorce.

(21) (70)

विवाह कानून (संशोधन) विधेयक, 1981 संबंधी संयुक्त समिति

विवाह कानून के संशोधन हेतु मेरा विचार ।

1. विवाह संबंधी विवरण ग्राम पंचायत के माध्यम से जिलाधिकारी के कार्यालय में लिखित रूप से दर्ज होना चाहिए ।

2. विवाह के समय वर (पुरुष) की उम्र 20 वर्ष व वधू (स्त्री) की उम्र 18 वर्ष से कम नहीं होना चाहिए साथ ही विवाह की स्वीकृति में वर-वधू के हस्ताक्षर होना चाहिए जिसमें किसी भी दूसरे व्यक्ति का दबाव सम्बन्धी हाथ न हो ।

3. विवाह के समय बारात के रूप में 11 व्यक्तियों से अधिक संख्या नहीं होनी चाहिए, साथ ही फिजूल खर्ची में शासन द्वारा कड़ी अंकुश होनी चाहिए ।

4. विवाह के 5 वर्ष बाद बच्चा न होने की स्थिति में वर-वधू को दूसरा विवाह करने की पूर्ण स्वतंत्रता होनी चाहिए एवं बच्चा हो जाने पर "वर-वधू" किसी भी पक्ष से तलाक तथा तलाक देने वाले को, तलाक लेने वाला यदि आपत्ति उठाता है तो शासन की ओर से तलाक देने वाले को 3 माह के कठोर कारावास की सजा मिलनी चाहिए ।

5. दहेज प्रथा पर शासन द्वारा कड़ी अंकुश होनी चाहिए ।

दहेज प्रथा :- चूंकि दहेज प्रथा सामाजिक बुराई है । घूसखोरी, कालाबाजारी एवं दहेज प्रथा को बंद करने में सरकार अभी तक असफल रही है । इन सामाजिक बुराइयों को सरकार भविष्य में भी दूर कर पाती या नहीं यह मैं नहीं कह सकता क्योंकि सरकार वर्तमान समय में जातिवाद को बढ़ावा दे रही है । यह जातिवाद समाज की बहुत बड़ी बुराई है । इसी बुराई के कारण राष्ट्रव्यापी आन्दोलन होने की संभावना भविष्य में पाई जाती है । आज सामान्य जाति में भी कितने व्यक्ति गरीबी की रेखा से बहुत नीचे हैं ।

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बेचारे उन अभागों के मस्तिष्क का पूर्ण विकास नहीं हो पाता जिसके परिणाम-स्वरूप गाँव में या शासकीय संस्थाओं में मजदूरी का कार्य करते हैं लेकिन हरिजन आदिवासी गलत १ जाति के लोगों को इतनी ज्यादा शासन द्वारा छूट दी गई है जिसका गलत फायदा वे लोग उठा कर अपने भविष्य को अन्धकार में डाल रहे हैं न कि उत्थान की ओर जैसे म०प्र० शासन में आदिवासी इलाकों में देशी शराब बनाने की छूट जिसका आदिवासी समाज पर बहुत बुरा प्रभाव है । इसी तरह से यदि दहेजप्रथा पूर्ण तरह से बन्द नहीं की जा सकती तो वर-वधू में किसी भी पक्ष द्वारा दिए गये दहेज का मूल्यांकन होना आवश्यक है और तलाक देने पर दहेज का मूल्य तथा 5 % वार्षिक ब्याज की दर से पूरा भुगतान तलाक देने के पहले करना चाहिए अगर दहेज देने वाला व्यक्ति ही तलाक देता है तो उस दहेज का मूल्यांकन शासन द्वारा अमान्य होना चाहिए ।

प्रेषक : शारदा प्रसाद श्रमिक
शा० कृषि प्रक्षेत्र पोंडी
जिला - शहडोल (मध्यप्रदेश)

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CONFIDENTIAL

ORIGINAL RECEIVED IN HINDI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

Comments/suggestions received from Shri Ganpat Singh, Vill. Pondri, Post Sehkari Nagar, Distt. Bulandshahar, U.P.

MEMORANDUM NO. 39

Following are the suggestions -

1. A person willing to have a divorce should be allowed by the courts to do so. Consent of both the parties should not be compulsory.

2. A person can have a divorce at any time but he should not be allowed to remarry within 5 years from the date of earlier marriage and if he marries within this period he should be sentenced to imprisonment of 5 years.

3. In case of death of any of the spouses, the other party should be allowed to marry immediately provided the deceased spouse had not filed a suit against the living one. In case a suit has been filed, the living spouse should not be allowed to remarry till the decision on the aforesaid suit.

4. The spouse seeking divorce should first submit before the court the ground for the divorce and then after a period of 6 months should ask for the divorce.

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विवाह विधि(संशोधन(विधेयक, 1980
संबंधी संयुक्त समिति ।

माननीय सचिव महोदय जी,

सादर नमस्कार ।

परामर्श के आधार पर मैं अपने विचार कुछ थोड़े से शब्दों में आपके पास भेजता हूँ ।

1. तलाक का इच्छुक व्यक्ति तलाक देता है तो अदालत द्वारा माननीय हो । दोनों पक्षों का राज़ी होना अनिवार्य है ।

2. तालक कभी भी दे सकता है । परन्तु विवाह होने की तिथि से 5 वर्ष बाद तक दूसरी शादी न कर सके । यदि दूसरी शादी 5 वर्ष के भीतर कर लेता है तो 5 वर्ष की कारावास की सजा हो ।

3. यदि दोनों पक्षों में कोई मृत्यु को प्राप्त होता है तो तुरन्त शादी कर सकता है । बशर्ते दूसरे पक्ष ने मुकदमा न चलाया हो । यदि मुकदमा चलाता है तो उसके निर्णय तक दूसरी शादी न कर सके ।

4. पहले अदालत के समक्ष तलाक का कारण प्रस्तुत करे । उसके 6 माह बाद तलाक प्रस्तुत करे । तभी तलाक माननीय हो ।

मैं अपने विचार जनता की तरफ से प्रस्तुत करता हूँ । यदि अनजाने में मैं कुछ अनुचित विचार लिख चुका हूँ तो मैं गलती के लिए क्षमा चाहता हूँ । आशा करता हूँ कि आप तुच्छ सेवक समझ कर मुझे मेरी टीच्छता के लिए क्षमा करेंगे ।

गणपतसिंह,
सुपुत्र श्री प्यारेलाल,
गाँव- पौन्डरी
पोस्ट - सहकारी नगर
जिला - बुलन्दशहर
यू.पी. ।

CONFIDENTIAL (23) (74)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 40

Comments/suggestions received from Smt. Subhadra Butalia, President, Karmika, B-26, Gulmohar Park, New Delhi.

While our organisation can understand the concerns which may have promoted such a legislation on marriage laws and appreciate the necessity of allowing an individual the right to seek divorce with respect and dignity, it is our plea that in this particular situation there does not appear to be sufficient reason to warrant such liberalisation. Divorce under the Hindu Marriages Act and Special Marriages Act is already possible through mutual consent, it can also be obtained on grounds of adultery, physical and mental cruelty, insanity and impotence. For those persons who are averse to arguing their personal problems in public there exists a provision for in-camera hearing. The proposed amendments therefore appear to us to be wholly unnecessary.

We oppose the proposed amendment also because we fear that such a legislation would have grave consequences socially. While we are aware that "progressive" legislation has always served as a tool of social reforms we are also aware of the dangers of attempting legislation too far in advance of existing social and economic conditions. It is our conviction that in seeking to mould society we have to deal with the world as it is and not as we would like it to be, else it would have grave consequences. Most of us are familiar with Mohammad-bin Tughlaq's ill-fated attempts to shift the capital of his empire from Delhi to Daultabad and introduce paper currency. Both these decisions though sound from the rational point of view proved disastrous under the then-existing conditions.

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A marriage, according to the proposed Bill can be held to have broken down irretrievably if the parties to a marriage have lived apart for a continuous period of not less than three years before the institution of divorce proceedings. In determining the continuity of the three-year period no account shall be taken of periods of less than three months during which the partners may have lived together. The Bill does not spell out any reason for living apart. uch a vague definition will have serious implications for spouses living apart because of the conditions of employment. Migrant workers who leave their wives in the village and come to the city in search of employment will misuse this clause if any one of them happens to meet a woman in the city. In the normal course he may do anything but he will not have any power to disturb the legal status of his wife and she would be entitled to such protection and financial support as the husband's family could afford. In the same way an Army Jawan who has to spend long years at non-family stations as a condition of his service can easily misuse this clause and divorce his wife.

This provision poses a very specific threat to working women. A husband not reconciled to his wife's pursuit of a career specially if it means living away from him, even temporarily, would be able to pressurise her to give up her job by threatening that he would launch proceedings under 'irretrievable breakdown of marriage'.

How would this affect women who are being harassed because of dowry? The husband could under pressure (physical assault, starvation and other pressure tactics) force his wife to go back to her parents or live separately, claim an irretrievable breakdown of marriage and proceed on to a second marriage and greener pastures.

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It can be argued that Section 13', grants the wife the right to oppose the dissolution of marriage on the grounds of grave financial hardship. In such circumstances the court is enjoined to consider all the circumstances, including the conduct of the parties concerned before finally issuing the decree of divorce. Here the concept of guilt or accountability for the breakdown of the marriage is brought in through the backdoor. If the purpose of the amendments is to avoid the burden of proving one of the parties 'guilty' (on the grounds already specified) then this purpose is defeated by this provision. If the court has to go into 'all the circumstances of the marriage' and the 'conduct of the parties to the marriage' it would in no way be different from the already existing divorce Act proceedings where one party does not agree to the grant of divorce.

Finally though vide Sections 13 and 13E, the court must satisfy itself that adequate arrangements have been made to avoid financial hardship to the parties concerned we cannot overlook the social stigma attached to a divorced woman and the extremely hostile world in which she has to live.

The amendment proposed would work well in a situation where women are economically independent and socially emancipated. But in India that is not the case. We believe that the ultimate value of any law must lie in the dictum of the greatest good of greatest number. By this criterion the proposed amendments appear to be unworthy of consideration. At the same time 'Karmika' would welcome efforts at liberalising divorce laws under the Christian and Muslim Marriages Act which is archaic and rigid.

We would however request the honourable members of the Committee to initiate research projects to determine the position of women in rural societies vis-a-vis marriage, divorce and economic opportunities before considering this amendment. If such a scheme is proposed 'Karmika' would be willing to cooperate.

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It is also our request that the position of women in the existing Hindu Marriage Act and Special Marriages Act be upgraded. At present she is only a dependent and entitled to claim maintenance only. We feel very strongly that a woman should be given the right of an equal partner and given an equal share in the husband's property and wealth if and when divorced.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 41

[Comments/suggestions received from Smt. S. Roy Choudhury, Gariahat Road, Calcutta.]

(1) I would particularly like to draw the attention of the Committee to Section 21-B of the Hindu Marriage Act,1955, which lays down that:

(a) "the trial be continued from day to day";

(b) "endeavour should be made to conclude the trial within six months";

(c) "endeavour shall be made to conclude the hearing (of every appeal) within three months".

Though the word "shall" has been incorporated in the aforesaid provisions, in my view the said clauses are merely recommendatory and have no effect in actual practice. I have reports about cases that have languished in courts for years, during which periods many unfortunate wives suffered incalculable hardships on account of dilatory tactics adopted by unscrupulous husbands. I filed a divorce suit in September, 1981 and, while nearly five months have passed since the date of service of the notice to the other side, I have not found any semblence of "endeavour" on the part of the trial court to complete the proceedings within "six months" as recommended by the Act. The result is that while my resources have almost run out, the court has been granting time to the opposite party month after month as a matter of routine. The serious lacuna in the said Section 21-B should be rectified by a suitable amendment so as to include in the relevant provisions a mandatory directive to courts to conclude trials within a specified period of, say, 6 months to one year.

(2) Section 24 provides for interim maintenance and expenses of proceedings, but such allowances and expenses are in practice rarely received by a petitioner during the pendency of a suit, because to avoid payments the opposite party generally takes recourse to long postponements of hearings and eventually goes up in appeal from one court to another to compel a poor and a helpless petitioner

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to surrender to the dictates of the other party. I am aware of instances in which petitioners found themselves in a quandary, when after final decisions were obtained, the opposite parties either pleaded their inability to pay the decretal amounts, or just did not comply with the orders, or left the country for good. Something should be done, therefore, to rescue a helpless petitioner from such a distressing situation.

(3) The number of matrimonial cases has been increasing considerably. In my view, there should be a provision in the Act for constitution of separate courts to hear only matrimonial cases.

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 42

[Comments/suggestions received from Shri Harjinder Singh, Junior Supervisor, Telephone (Traffic), Ferozepore.]

As per the Hindu Marriage Act, 1955 (1981) there is no provision of providing an equal stage for the aggrieved and the accused parties.

In some cases where a party complains to the police about the seperation of his or her spouse, Police authority ignores any genuine action on the base that it is not a cognizable case, and hence there this type of reply is received by the aggrieved party in a considerable interval of time.

And in this manner if the aggrieved party goes on fighting in the Lower Courts in order to get rid of the third person interested in the disolution of the marriage or to save himself and his/her spouse from the undesired interference of their relationship. A lot of time is wasted.

On the other hand if some one wants to take leave of the other he has to wait for some time which also provide an ample time for the violating of secrecay of the soleminised marriage. On the one hand and demolition on the other hand.

Hence in order to save the sacred sentiments of the marriage according to our religious beliefs around which the majority of the people rotates. Practically implementation of democracy be implemented by calling both the parties at an equal stage immediately on the the receipt of a complaint. In order to avoid unjust, unlawful, undesired and unwanted interference of any person or party taking undue benefit of any kind out of a married couple. This the present deficency of the Law is providing an ample chance for extortion which is running the lives of the Law binding people in the country and pushing them to adopt a demoralised way of life.

The example of these cases can be supplied on demand in order to show the interference of influencial people at the highest level of the country "upto the Hon'ble President of India".

CONFIDENTIAL (4) (81)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 43

[Comments/suggestions received from Shri A.D. Deshpande, Deshpande Wetal, Akot, Distt. Akola (Mah. S).]

1. The Law is in favour of woman - The principal of every Law is equality before the Law. So the said act must be amended as per above principal. In the present Law, undue importance is given to the women. So man is not getting justice by this Law.

2. In some cases, the disadvantages are taking by the women. For example, the wife said to the husband if your want me, you must leave your family members.

3. In present law, u/s 13 (B) the time limit is 6 months after filing the suit under mutual consent. I have to advise to amend the time limit for maximum 1 month only under the mutual consent.

4. Employed wife should not get any maintenance from her husband in any case and on the ground of -

(a) low salary drawn than husband
(b) for the maintenance of the child.

5. Most of the ladies, particularly whose financial position is sound are adment in married life & by any reason, she left husband deserted, only because the law has been made in their favour. Some practical experiences are seen by the undersigned in the above references.

6. Any wrong thing after marriage done by wife purposefully or to hide up their personal matters, necessary inquiries should be made regarding the woman or her family, in the cases where the wrong things are happened.

7. Instead of helping smooth married life, Hindu Marriage Act, increases the percentage of "Divorce" camparatively before the passing of this Bill.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 44

[Comments/suggestions received from Shri Bidnt Ro· Choudhary, Advocate, District Judge's Court, Hooqly .]

Amendment of Sec. 8.

Registration of Hindu Marriages should be compulsory, otherwise in so many occasions it is very difficult to proof the Hindu Marriages by the evidence of different witnesses.

Amendment of Sec. 9.

Restitution of conjugal rights - There must be a provision that the wife must remain under the roof of her husband.

Amendment of Sec.12.

Regarding Sub-sec. (c) & (d) the petition should be filed within one month from the date of marriage and for the said purpose divorce petition will be allowed to file after one month from the date of solemnization of marriage instead of one year.

Amendment of Sec.13.

Sub-sec. (1b) of Sec.13 - has deserted the petitioner for a continuous period of not less than one year instead of two years immediately preceeding the presentation of the petition.

Amendment of Sec.15.

Six months after the date of declaration of a marriage has been dissolved by a decree of divorce when there is no appeal pending.

Provision for execution of a Divorce Decree.

It is my humble suggestion that there should be specific provision for execution of the Decree of Divorce or the Restitution of conjugal rights. Definitely, it will not be come under the provisions of order 21 of the Civil Procedure Code. But in case of failure of the execution of restitution of conjugal rights after a certain period i.e. after one year it will be presumed there ill be a divorce and in case of failure of Divorce suit i.e. where either party is unable to prove the case of Divorce then in that case
after passing of the judgement it after a certain period i.e. one years the couple is not in a position to obey the order of the court, there should be a suo-moto Divorce.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(Original received in Hindi English Summary)

MEMORANDUM NO. 45

[Comments/suggestions received from Shri Harish Kumar Verma, Gila Mursan, Distt. Aligarh.]

The provisions for the divorced couple, especially woman.

1. Polygamy should be completely banned in India.

2. Husband should be asked to give maintanance allowance to his wife after the divorce.

3. Husband should be asked to give subsistance and educational allowance for his children in case he does not want to keep them with him after the divorce.

4. The minimum marriageable age for the boy and the girl should be fixed at 21 and 18 years respectively.

5. Excessive age difference between the couple should be avoided.

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ज्ञापन संख्या 45

सेवा में,

श्रीमान सचिव,

लोक सभा, संसदीय सौध, नई दिल्ली

मान्यवर,

सविनय निवेदन यह है कि तलाक के विषय में मैं अपने विचार भेज रहा हूं रहा हूं । जो कि निम्न लिखित है :-

1-तलाक देने के प्रमुख कारणों पर सर्वप्रथम एक निगाह डालनी चाहिये । इन में से नम्बर एक तो स्त्री के बदचलन होने पर, नम्बर दो कभी किसी पुरूष के साथ शादी में धोखा करने पर जैसे कि दिखाई तो लड़की दूसरी और शादी की दूसरी लड़की के साथ तो कोई भी पुरूष तलाक दे देता है ।

2- जब किसी पुरूष की दो-दो, तीन-तीन शादी हो जाती है तो पुरूष व्याकुल होकर या स्त्री बैचेन होकर तलाक दे देती है ।

3- दहेज के कम होने के कारण कभी कभी पुरूष स्त्री को जलाकर या फांसी देकर भी हत्या कर देता है या फिर तलाक दे देता है ।

तलाक देने वालों के साथ क्या नियम कानूनी होना चाहिये ।

1-प्रत्येक पुरूष पर बंदिश होनी चाहिये कि वह दो या तीन शादी न करे ।

2-यदि पुरूष तलाक देता है तो उसे स्त्री का खाने-पीने का कपड़ों आदि का पूरा खर्चा देना चाहिये ।

3-यदि पुरूष को बच्चे अपने पास नहीं रखने है तो उसे बच्चों की पढ़ाई-लिखाई, खाने-पीने आदि का पूरा खर्चा देना चाहिये ।

4- यदि पुरूष स्त्री के काबिल नहीं है तो उसे शादी नहीं करनी चाहिये यदि वह शादी कर भी ले तो तथा स्त्री तलाक दे तो उसे स्त्री का पूरा पूराखर्चा देना चाहिये ।

5- कम उम्र की लड़ी की शादी ज्यादा उम्र के लड़के के साथ तथा कम उम्र के लड़के की शादी ज्यादा उम्र की लड़की के साथ नहीं होनी चाहिये ।

6-शादी के समय लड़के की उम्र 21 वर्ष व लड़की की उम्र 18 वर्ष होनी चाहिये ।

- -

अति आपका आज्ञाकारी

हरीश कुमार पौन्निया, 204213
मिला मुरसान, जिला अलीगढ़

CONFIDENTIAL (8) (85)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(Original received in Hindi
English Summary)

MEMORANDUM NO. 46

[Comments/suggestions received from
Shri Ramkishan Sharma, Rajgarh (Rewari)
Mahendragarh, Haryana.]

He has appreciated the idea of taking public opinion in this matter.

He has stated that the girl should get married at the age of 18. Regarding boy he has suggested that he must attain the age of 25 at the time of marriage. He has also criticised child marriage.

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ज्ञापन संख्या 46

रामकिशन शर्मा
रा॰उच्च विद्यालय
राजगढ़ (रेवाड़ी)
जिला: महेन्द्रगढ़
(हरियाणा)
पिन - 123412

आदरणीय मान्यवर,

सादर प्रणाम

कल ही आकाशवाणी द्वारा आप के विवाह सम्बन्धि कानून, 1955 को और 30 नवम्बर, 1981 के विधेयक के बारे में विशेष समाचार मिला और आपने इस विषय पर जनता के विचार भी जानने चाहे हैं। वैसे तो आपके पास अनेक विशेषज्ञ, विदुषक तथा अनेक हर विषय के ज्ञाता है परन्तु "जनता के विचार" का अलग ही महत्व है। देश के विकास के लिए "सहमति" की बहुत जरूरत है। धोखे में रह कर हानि भी हो सकती। इस विषय में तो बहुत ही जरूरी है कि जनता के विचार जानने की। विषय यह है कि शादी के लिए लड़का और लड़की की उम्र क्या होनी चाहिए।

लड़की उम्र :- हमारे वेदों, ग्रन्थों के आधार पर तो लड़की को पिता के घर पर रजस्वला नहीं होने देते थे। रजस्वला लड़की बाप के घर पर पाप समझते थे। लड़की रजस्वला प्राय, 14, 15 वर्ष की उम्र हो जाती है। इस लिए इस आधार पर लड़की 15 वर्ष की उम्र में शादी कर देनी चाहिए।

2॰ प्रावृत्तिक सहयोग के आधार पर :- प्रावृत्ति के आधार पर हम पशु और पक्षियों को देखते हैं। उनमें सेक्स ठीक अवस्था में होता है जिसका वे भोग भोगते हैं।

3॰ आधुनिक वातावरण :- आज समाज में परिवार नियोजन के सुने प्रचार से सुधार भी हुआ और हानि भी। किशोरावस्था में लड़के भावुक होते है वे भावुकता में परिवार नियोजन के प्रचार द्वारा प्रचारित साधनों को अनुभव में लाते है। प्राय: ऐसा देखा गया है।

निष्कर्ष :- इन सब बातों को ध्यान में रखते हुए लड़की की शादी मेरे विचार में 18 वर्ष की उम्र में होनी चाहिए। इस उम्र में किशोरावस्था का जोश पूरे जोरों पर होता है। सेक्स हार्मोन की हद भी पूरी हो लेती है। इससे अधिक होने पर समाज में "बलात्कार" होना शुरू हो जाता है।

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लड़के की उम्र :-

उपरोक्त बातों के आधार पर यह कहा जा सकता है कि लड़के की संगति अच्छी हो । माँ-बाप बच्चे को काम में लगाये रखें, उसकी हर हरकत को ध्यान में रखें तो बच्चा अधिक वक्त तक ब्रह्मचर्य का पालन कर सकता है । पर तो लड़की भी सकती है, लड़की के साथ तो उसकी सुन्दरता, उसकी परिस्थितियाँ उसको मजबूर कर देती है । इन बातों को देखते हुए । लड़की की शादी की उम्र 18 वर्ष और लड़की की शादी की उम्र 25 वर्ष होनी चाहिए । दूध के उबाल की भाँति इस उम्र के "उबाल" को ही ध्यान में रखा जाये । समाज में "करप्सन" नाम की बिमारी न आ सके । इसके बाद उनमें समझ पैदा हो जाती है । बाल-विवाह बिल्कुल ठीक नहीं । पके फल, में जैसा स्वाद है वैसा कच्चे में नहीं । परिपक्वता इस उम्र में हो रहती है । हमारे पूर्वज भी कहते आये है 17, 27 का जहुरा है । बाद में बुढ़ापा है । 17 से 27 वर्ष के बीच की उम्र उपयुक्त है ।

आपको हमारे स्टाफ की तरफ से नमस्कार ।

भवदीय

राम किशन शर्मा

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(Original received in Hindi
English Summary)

MEMORANDUM NO.47

[Comments/suggestions received from Shri Ravinder Kumar Singhal, Jagatpuri, Delhi.]7

Unemployed persons should not get married. Parents of the girls should also not marry their daughters to unemployed persons.

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ज्ञापन संख्या 47

विवाह विधि (संशोधन) विधेयक, 1980
संबंधी संयुक्त समिति ।

जगतपुरी
24·1·1982
शाम 7·15 पर

श्री मान जी,

नमस्कार ।

आगे समाचार यह है कि मैं लगभग 15·1·81 के या इसके आस पास में आपका रेडियों पर प्रोग्राम सुन रहा था । अत: उस प्रोग्राम में आपने सभी सुनने वालों से अनुरोध किया था कि विवाह के बारे में आप हमें 31·1·82 तक अपने अपने विचार लिख कर भेजें । अत: मैं इस पत्र को लिखने के लिये कुछ समय से बहुत उत्सुक था मगर ज्यादा समय न होने के कारण मैं पत्र लिखने में असमर्थ था । आगे इससे पहले मैं आपसे अपने पत्र के जवाब के लिये प्रार्थना करता हूं कि जवाब अवश्य दें । विवाह संबंधी मेरे विचार निम्नलिखित हैं ।

1· सबसे पहले मनुष्य को रोजगार की आवश्यकता पड़ती है अगर किसी पुरूष का रोजगार नहीं है तो उसे शादी नहीं करवानी चाहिये । दूसरे ये के खुद लड़की वाले को भी समझना चाहिये के ये बेरोजगार लड़का है या इसके अंदर कोई ऐसा गुण नहीं है जिससे के ये अपना लालन पालन कर सके उससे या बेरोजगार लड़के से शादी कर देना भी एक बहुत बड़ी भूल होती है । छोटी उमर में शादी कर देने के बाद मां बाप को बहुत सी दिक्कतों का बड़ी बर्बरता से सामना करना पड़ता है । पछताना भी पड़ता है । कुछ लोग शादी का तात्पर्य न समझकर उसे या यूं कहिये अपने जीवन साथी को तंग करते हैं जिससे घर बरबादी की तरफ चल देता है और ऐसा करने वाले लोग कभी भी जिन्दगी में सफलता पाने में असमर्थ रहते हैं । शादी हो जाने के बाद मनुष्यता समझना ही एक अच्छे पुरुष की ड्यूटी है ।शादी का मतलब होता है कि दो प्राणियों को एक बंधन में बंध जाना तथा एक दूसरे को मिल जुल कर के काम करने का

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(13)

सुनहरा अवसर मिलता है । वो इसे जीवन साथी समझे या जीवन निर्वाह समझे । कहने का तात्पर्य यह है जो जीवन साथी समझ करेगा उसे कामयाबी अवश्य मिलेगी । वरना निर्वाह तो हर जीव जन्तु या प्रत्येक प्राणी करता है और करता ही रहेगा । शादी एक ऐसी चीज है जैसे गाड़ी के दो पहिये । अगर किसी एक में भी कोई भी गड़बड़ी पैदा होती है उसको उसी वक्त सुधार लेना चाहिये वरना एक बार का धोखा ही उमर भर का धोखा बन कर के रह जाता है । मैं समय की कमी होने के कारण पत्र को यहीं पर समाप्त कर रहा हूं लिखना तो बहुत कुछ चाहता था मगर लाचार समय ने बना दिया है ।

आपका आशावादी
रवीन्द्र कुमार सिंघल

मेरा पता इस प्रकार है ।

अपना स्टोर
रवीन्द्र कुमार सिंघल
बी-28 जगतपुरी
डाक खाना कृष्णनगर
मन्दिर रोड
देहली 110051

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CONFIDENTIAL (14)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(Original received in Hindi
English Summary)

MEMORANDUM NO. 48

[Comments/suggestions received from Shri Mohan Lal Mehra, V & P.O. Agrana Kalan, Distt. Kurukshetra (Haryana).]

Difference between the age of the bride and bridegroom should not be much and Government should enact a law in this regard.

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ज्ञापन संख्या 48

विवाह विधि (संशोधन) विधेयक, 1980 संबंधी संयुक्त समिति ।

हिन्दू विवाह अधिनियम में संशोधन के लिए एक प्रार्थना पत्र

भारत एक धर्म निरपेक्ष देश है । इसमें विभिन्न धर्मों, जातियों व समुदायों के लोग रहते हैं । भारतीय समाज एक ऐसा समाज जिसमें कुछ ऐसी कुरीतियां हैं जिनको नजरअन्दाज नहीं किया जा सकता । विशेषकर हिन्दू धर्म विवाह के बारे में है ।

अगर परमात्मा की दृष्टि से देखा जाए तो समाज में तीन ऐसे प्राणी या जीव जिनको गरीब कहा जा सकता है (1) गाय (2) गरीब (3) लड़की । हमारे देश में पंचवर्षीय योजनाओं में उत्पादन हर क्षेत्र में बढ़ा यहां तक कि भारत जिन चीजों का बाहर से आयात करता था उनमें भारत ने आत्मनिर्भरता प्राप्त कर ली है प्रति व्यक्ति आय भी काफी बढ़ गई है । जिस आदमी के हाथ-पांव चलते हैं तो वह कहीं भी कार्य करके गुजारा चला सकता है ।देश में खाने के लिए रोटी, पहनने के लिए कपड़ा, रहने के लिए मकान मिल जाए तो देश को खुशहाल ही समझा जायेगा ।

(2) गो-हत्या को सरकार ने कानून बनाकर उस पर प्रतिबन्ध लगा कर एक ऐसी हत्या को खत्म कर दिया है जिससे हर एक प्राणी चिन्तित था । धार्मिक लोग कहा करते थे । भारत और इसमें ये क्या तो इसके लिए सन्त विनोबा भावे जी को बहुत धन्यवाद जिन्होंने इस कार्य के जी-जान से प्रयत्न किये और वे अन्तत: अपने उद्देश्य में पूरे उतरे ।

3. लड़की बेचना मैं समझता हूं कि भारत में आदमी और औरत के अधिकार बराबर हैं हर प्रकार की सुविधा, ऊंचे-ऊंचे पदों पर आसीन महिलाएं आज पुरुष से कन्धे से कन्धा मिलाकर चल रही हैं यहां तक कि कई क्षेत्रों में महिलाएं पुरुषों से आगे हैं । परन्तु ये सब अधिकार शहरों तक ही या साक्षर लोगों तक ही सीमित है । जो महिलाएं अनपढ़ या ग्रामीण वासी हैं उनको इसके बारे में कोई ज्ञान नहीं कि उनके अधिकार क्या हैं । उनके साथ

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अब भी पशुओं जैसा व्यवहार किया जाता है । भारत के कई भागों में अब भी कुंवारी कन्याओं को बेचा जाता है । इस तरह से रखा जाता है जिस तरह से पशुओं को रखा जाता है । मासूम कन्याओं के अरमानों का गला घोंट दिया जाता है अब वह किसको अपना कहे । सोलह वर्ष की एक लड़की का विवाह एक चालीस साल के आदमी से कर दिया जाता है । समाज में इस समय इस कुरीति से बढ़कर और कोई नहीं हो सकती है ।यह भी बात नहीं कि गरीब हों तो बल्कि उन लोगों ने लड़कियों को बेचना एक व्यापार बना रखा है । यह हिन्दू धर्म या हिन्दू विवाह पर एक कलंक है । इसके लिए सरकार को कानून बनाकर प्रतिबन्ध लगाना चाहिए ताकि इस प्रथा को जड़ से काटने में कुछ सहायता मिले । मुझे इसके बारे में कुछ भी मालूम नहीं कि कानून बना या नहीं और यदि बना है तो इस का असर उन इलाकों में खासकर ग्रामीण क्षेत्रों में जहां था वहीं का वहीं है । मैं समझता हूं कि लड़कियां जिनको हर प्रकार के काम में इस्तेमाल करना यह एक शर्म की बात है । भारत भगवान ने तो उसको औरत बना दिया परन्तु उनका संरक्षण करना या सुरक्षा देना हमारा कर्त्तव्य बन जाता है । यह इतना बड़ा कार्यसरकार पर आयस होता है कि इसके विरुद्ध कारगर उपाय उठाए जाएं जिससे यह कुरीति समाज में से निकल जाए । भारतीय समाज में कुरीतियों हैं जिनके बारे में सरकारनेकाफी कदम उठाए है । सरकार को चाहिए कि वह इस पर प्रतिबन्ध लगाए । महिलाओं को कानूनों और सख्त संरक्षण की आवश्यकता है । तो इसी के साथ मैं यही समाप्त करता हूं । अगर मैं गलत लिख गया हूं तो क्षमा चाहता हूं । मैं आशा करता हूं कि इस पर ध्यान देकर जरूर सख्त कदम उठाए जायेंगे ।

धन्यवाद ।

मोहन लाल मेहरा
गांव व डाकखाना अजराना कला
जिला कुरुक्षेत्र हरियाणा ।

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CONFIDENTIAL (17)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(Original received in Hindi
English Summary)

MEMORANDUM NO. 49

[Comments/suggestions received from Shri Jagdish Chander, Shanti Nagar, Haryana.]

(1) Dowry system should be discouraged.

(2) Expenditure on decoration etc. should be minimum; and

(3) The minimum number of persons should accompany the marriage party (Barat).

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ज्ञापन संख्या 49

विवाह विधि (संशोधन) विधेयक, 1980

संबंधी संयुक्त समिति ।

शान्ति नगर

24·1·1982

सभापति महोदय,

नमस्कार ।

हमने रेडियो स्टेशन दिल्ली से जरूरी सूचना में सुना है कि आपने शादी एक्ट के बारे में देश के लोगों के विचार मंगवाये हैं मैंने भी अपने विचार देने के लिये पत्र लिखा है आशा है कि आप पत्र को पढ़ कर मेरे छोटे से विचारों को मंजूर करेंगे ।

महोदय जी, शादी एक्ट के बारे में मेरे विचार ऐसे हैं । कि शादी बिल्कुल सादी होनी चाहिये । दहेज प्रथा बन्द होनी चाहिये । दहेज न लिया जाये और न दिया जाये । शादी की शो पर खर्च बिल्कुल कम किया जाये । लड़के की जन्नेत में कम से कम आदमी जाने चाहियें । मुझे आशा है कि आप सब लोगों के विचार लेकर अच्छा निर्णय देंगे ।

आपका आदरणीय,

जगदीश चन्द्र ।

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CONFIDENTIAL

19

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 50

/ Comments/suggestions received from Smt. Nitaben Dhirendra Shukla, Chandrodaya Society, Near Stadium, Ahmedabad-9 /

The introduction of the provision for divorce by mutual consent by Amendment Act of 1976 is a welcome step. However, it is found that in cases where the husband and the wife cannot live together, with a view to harassing each other, either of them withholds consent with the result that divorce by mutual consent is not possible. The introduction of a ground of irretrievable break-down of a marriage for divorce appears to be a further welcome step. I would whole-heartedly support introduction of such a ground.

I am wife of a marriage which is solemnised under the Hindu Marriage Act, 1955 as per the ceremonies prescribed under the Act, at Ahmedabad. My husband is a Hindu Brahmin who is domiciled in Kenya (South Africa). After my marriage and after my reaching Nairobi with my husband, I learnt that he had married twice prior to my marriage and that one of such marriages is not lawfully dissolved. There were number of other problems in my married life which ultimately led to my coming back to India and filing a petition for dissolution of marriage in the City/Civil Court at Ahmedabad. The husband did not turn up but appointed a power of attorney and questioned the jurisdiction of the Indian Court on the ground that the provisions of the Hindu Marriage Act, 1955 do not apply. Section 1 of the said Act is as under:-

"1. (1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories."

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The words used in Section 1 (2) "applies also to Hindus domiciled in the territories" are interpreted to mean that both the parties to the proceedings should be domiciled in India and that where the husband is found to be domiciled outside the territory of India, the wife acquires the domicile of her husband after marriage and, therefore, the provisions of the Act do not apply and consequently the provisions as regards jurisdiction of the Court also do not apply.

With respect to the Honourable Judges of the Special Bench of the Calcutta High Court as reported in A.I.R. 1978 Calcutta, the reasoning does not appear to be legally correct. The contrary view expressed by the earlier Bench of the Calcutta High Court in A.I.R. 1973 Calcutta 425 is a better and a preferable view. However, the Section which is enacted for the purpose of determining the extent and scope of the Act is in fact being used for the purpose of ousting the jurisdiction of the court.

It is in such a situation that I am making a request to your honour to consider the necessity of amending this provision contained in Section 1 of the Hindu Marriage Act either by way of specific amendment of sub-section (2) or by introduction of an Explanation to the said Section. The City Civil Court at Ahmedabad had after a prolonged trial of two years rejected my petition for divorce and for declaration of nullity of marriage simply on the ground that it had no jurisdiction because of Section 1 of the Act. It appears that the question of jurisdiction and extent of the Act are unfortunately confused but the decision of the Special Bench of the Calcutta High Court is used against me. I as a laywoman understand that in fact the provision in Section 1 (2) appears to have been enacted with a view to avoiding the vice of extra-territoriality. The same is used for the purpose of turning down a petition on the ground that the Act does not apply to a fact situation where the marriage is performed according to Hindu Ceremonies within the territories of India and where one of the spouses to the marriage is domiciled in Indian Territory simply on the ground that the other spouse is the domicile of the country to which the Act does not apply.

..3/-

The factum of celebration of marriage and both the parties to the marriage being Hindus is completely ignored and the factum of the domicile of the wife also does not assume importance because of the staturory provision under the Indian Succession Act whereunder the wife after the marriage acquires the domicile of the husband.

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CONFIDENTIAL (21)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 51

[Comments/suggestions received from Smt. Kusum, Indian Law Institute, Bhagwandas Road, New Delhi]

The insertion of breakdown of the marriage as a ground for divorce in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 would be welcome amendment to the Acts. Though provisions for exit out of a tempestuous marital union are there but, as is well-known, they are too technical and do not solve the problem 'Mutual consent' is of no avail where one of the parties alone wants deliverance and the other wants status-quo just a tag of matrimony even though in reality there is no tie between the spouses.

However, the following are my comments on some sections of the Bill.

Under Section 13 (C) (5) "a husband and wife shall be treated as living apart unless they are living with each other in the same household and living with each other shall be constructed as living with each other in the same household".

This definition is likely to give rise to controversy in situations where parties are living separately because of their professions. Is it not desirable that an exception should be provided to cover such cases?

Secondly, under the Bill vide section 13 D(i) a wife, if she is the respondent, may sabotage a husbands right to divorce on the ground that the dissolution will

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result in grave financial hardship to her and that it would in all circumstances be wrong to dissolve the marriage. Now, is this clause not against the very spirit and idea behind the amendment? A wife needs greater security no doubt but that could be done by way of more effective provisions for maintenance and other social security measures rather than blocking the husband's right to a divorce where, in case the petitioner had been the wife, she, under the same circumstances, would have got the divorce.

Thirdly, under section 13D, again, when the petition is opposed by the wife the court must take into consideration the interest of .. other persons concerned (also). What is meant by other persons? The parents, friends, relations etc. etc.? Also what is meant by their interests. Is the interest financial, social or emotional? In any case, the very idea of inducting third persons in matters where divorce is sought on grouds that marriage has irretrevally broken down is a dangerous proposition.

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CONFIDENTIAL

ORIGINAL IN HINDI
(ENGLISH SUMMARY)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 52

[Comments/suggestions received from Shri Gorey Lal Dass, "Artist" Bhagalpur, Bihar]

1. According to Indian Divorce Act, 1869 if either of the spouse is suffering from an incurable disease like leprosey, T.B., Cancer or mental illness then a decree of divorce can be granted.

2. If either of the spouse is not loyal to each other then a divorce can be obtained.

3. If the husband ill treats the wife then a divorce can be obtained.

4. If either of the spouse is unable to bear children then a divorce can be granted.

5. If they are living separately for the last five or seven years they can ask for divorce

6. There should be uniformity in all the divorce Acts.

7. According to sub-section 125 of the Marriage Laws Amendment Bill, 1973, if the wife does not know household job, is uneducated then the husband has to give maintenance to the wife which is fixed by the court. If the husband is a Government employee then the wife gets the maintenance but if the husband is working in some private concern then the court does not give proper attention to it so the wife should get her due in both the cases unless and until she remarries.

8. If a divorced woman has only one child and she remarries then the custody of the child should be entrusted to the first husband.

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9. If there is one son and one daughter then the custody of daughter should go to the husband while that of the son should go to the wife.

10. If there is only one child then his custody can be given to either of them with the other partners consent. If there is no consent between them, then both the partners should give maintenance for the child's upkeep.

11. While granting a decree of divorce the court should give two chances of one year duration to the estranged couple and if they still want a divource then a legal certificate should be issued.

12. If the couple has adopted a child then both partners have equal right on him.

13. In the case of ill-matched marriage which has been performed for financial reasons then either of the spouse can ask for a divource.

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ज्ञापन संख्या 52

हिन्दुस्तान समाचार

21/12/1981

रेफ

विवाह - कानून (संशोधन) विधेयक के संदर्भ में

भारतीय जनता से सुझाव की माँग ।

सलाहकार श्री गोरे लाल दास कलाकार (आकाशवाणी)

सचिव नेहरू - स्पोर्टस क्लब

ग्राम मसदी हाता

पत्रालय सुल्तानगंज

जनपद भागलपुर (बिहार)

दिनांक 27/1/1982

सेवा में

सचिव - लोक सभा भवन (भारत सरकार) नयी दिल्ली ।

जय भारत ।

दयासागर,

सविनय निवेदन है कि मैं भारत सरकार के विज्ञापन के अनुसार उपर्युक्त अधिनियम में संशोधन हेतु निजी सुझाव प्रस्तुत कर रहा हूँ आशा है उसे स्वीकार कर भारतीय जनता को लाभान्वित करायेंगे।

वास्तव में वर्तमान "विवाह कानून" में संशोधन होना चाहिए । क्योंकि इससे खास कर नारियों के पक्ष में उचित उपाय नहीं किया गया है ।

अत: निम्नलिखित सुझाव भारत के सेवार्थ प्रस्तुत हैं :-

1. "इंडियन डायवोर्स एक्ट 1869 के तहत अगर पति या पत्नी असाध्य रोग जैसे मेट, कैंसर, टीबी, पागलपन से ग्रसित हों तो एक दूसरे को "तलाक" न्यायालय द्वारा मिल सकता है ।
2. इसी तरह अगर पति या पत्नी दुश्चरित्र क्रमश: परपुरुष गामिनी हो तो तलाक मिल सकता है ।

3. अगर पति, पत्नी को सीमा से बाहर उत्पीड़न देता हो, तो पत्नी न्यायालय से विवाह - विच्छेद मांग सकती है ।

4. "अगर पति या पत्नी क्रमश: नपुंसक वा बांझ हो, तो न्यायालय से तलाक की मांग कर सकता है ।

5. अगर पति या पत्नी लगातार 5 या 7 साल तक एक दूसरे से संपर्क नहीं बनाये रखे, तो न्यायालय उसे तलाक दे सकता है ।"

6. "तलाक कानून में एकरूपता लाने के लिए मेरे सुझाव के अनुसार "हिन्दु कोड बिल 1965" "मुस्लिम मैरिज एक्ट 1939" एवं "परसिन डायवोर्स एक्ट 1937 में" इंडियन डायवोर्स एक्ट 1869" का प्रावधान कर दिया जाये (7) "विवाह कानून संशोधन 1973 को उपधारा 125 के तहत अगर पत्नी को कार्य अनुभव नहीं हो", अशिक्षित हो, निकासी हो तो पति को पत्नी के निर्वाह हेतु न्यायालय द्वारा मुकर्रर प्रति माह पेंशन मुहैया करना होगा ।

8. "इंडियन डायवोर्स एक्ट 1869 में सबसे भारी भूल यह हो गई है कि अगर पति राजकीय सेवा में है तो पत्नी को पेंशन/तलाक मिलने पर पति की ओर से मिलती है किन्तु, अगर पति प्राइवेट विभाग रहता है, तो उसके उपर कानून ध्यान नहीं देता । इससे नारियों के प्रति "न्याय पालिका" ने अन्याय किया है ।" अत: किसी भी विभाग में पति कार्य करता हो, न्यायालय को या चाहिए कि उसकी आय को मध्य नजर रखते हुए पत्नी को पेंशन दिलायें ।"

9. पत्नी को कभी तक पेंशन मिलें जब तक कि वह दूसरा शादी न कर ले । ... शादी करने से प्रथम पति पर का अधिकार स्वत: निरस्त हो जायेगा ।"

10. "शिशु" के तहत उलझन उत्पन्न होने पर "शिशु अवपरण संरक्षण अधिनियम 1956 की धारा 6(क) के अनुसार 5 वर्षतक के बच्चे का भार माता पर रहेगा क्योंकि कोमल हृदय पर माता का कल्याणकारी प्रभाव पड़ता है और 6 वर्ष से शिशु का भार पिता पर पड़ना चाहिए ।"

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क्योंकि पिता उसके शारीरिक, मानसिक और शैक्षणिक विकास पर पूर्ण ध्यान देगा ।"

11. "अगर तलकशुदा पत्नी को एक ही संतान हो और वह पुनः शादी कर ले तो संतान पर पूर्व पति का अधिकार हो जायेगा ।"

12. "अगर दो पुत्र हो या दो पुत्री हो तो आधा आधा सम्पत्ति बांट लेंगे । अगर एक पुत्री और एक पुत्र हो तो पुत्री पति को मिले क्योंकि पति के ऊपर उसकी शिक्षा व शादी का भार आना चाहिए अगर पुत्र पत्नी को मिलना चाहिए क्योंकि अबला का सहारा उसका पुत्र ही होगा लेकिन पत्नी अगर शादी कर ले, तो पुत्र पूर्व पति को होगा ।"

13. अगर दम्पति/की एक ही संतान हो, तो तलाक वक्त चाहे तो अपनी मर्जी से पति को दान कर दे या पत्नी को ।"

14. "अगर एक संतान को लेकर काफी संकट उत्पन्न हो जाये तो न्यायालय उस पर दम्पति को समान अधिकार दे । किन्तु उसकी शिक्षा व पालन या का उचित समान रूप से देने के लिए बाध्य करना होगा ।

15. "गर तलाक करते समय याचिका दर्ज हो तो न्यायालय । वर्ष तक कोई निर्णय नहीं दे क्योंकि हो सकता है इस अवधि में पुनः मेल हो जाये । । वर्ष बाद पुनः याचिका दर्ज कराने पर फिर । वर्ष का समय दें । इस पर भी, पति पत्नी/में मेल नहीं हो तो तीसरी बार विधिवत । काफी कारवाई कर अंत में पुण्य के आधार पर तलाक की स्वीकृति प्रदान की जाये ।"

16. "अगर दम्पति को" दत्तक संतान हो तो "तलाक" की परिस्थिति में संतान पर दोनों को बराबर वर्चस्व कायम रहेगा ।

17. "अगर पैसे के लोभ में बेमेल शादी कर दी गई हो युवक या युवती "तलाक" का मांग कर सकता है ।"

हस्ताक्षर : श्री गोरे लाल दास "कलाकार"

दिनांक 26.. .1982

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CONFIDENTIAL

ORIGINAL IN MARATHI
(SUMMARY IN ENGLISH)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 53

[Comments/suggestions received from Smt. Vasudha Tagadpillewar (Nanded) Maharashtra.]

1. Marriages of minor boys and girls are celebrated in rural areas of the country. This practice should be immediately prohibited by law.

2. If Caste, religion or creed create any obstacle for those who wish to enter matrimonial relations, law should give sufficient protection and assistance to such persons.

3. Unmarried man and woman should not be looked down upon by society. They should enjoy all the privileges available to others, e.g., adopting a child etc.

4. Persons willing to enter inter-caste marriages should get social prestige and such persons should be given financial assistance.

5. The minimum age for marriage is now 18 in case of girls and 21 in case of boys. But this restriction is not strictly followed in rural areas. Persons who do not follow this restriction should be fined.

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CONFIDENTIAL

(ORIGINAL IN HINDI)

SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 54

/ Comments/suggestions received from Shri Ompal Singh S/O Shri Jagbir Singh, Vill. & P.O. Ailum, Distt. Muzaffar Nagar, U.P. /

He has suggested that the women should get the equal rights in the society. If a husband wants to divorce his wife, he can do. this only when his wife is prepared for that and similarly the wife also can do so. She can not marry again without her husband's permission. The rights should be equal for both the sexes. If the wife's rights are more than the husband's rights, the problems of divorce will invariably increase. Neither the husband nor the wife should be allowed to remarry upto two years after the divorce, because during these two years, the divorced couple can calmly think over the matter and they would not repeat the same errors in future.

If a husband wants to marry with another girl for want of a child.he must have the permission of his first wife and in case after the next marriage, the first wife also becomes a mother, the children of both the wives should be allowed to have equal rights. According to him there should be no cast-restriction for the marriage purposes. After the birth of a son, there should be no divorce at all. If after the marriage a spouse dies, the living one should be allowed to remarry. If ater the birth of a son, the mother dies, the son's father should/be allowed to remarry till the son is alive so that the son's future may not be bleak.

/not

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सचिव महोदय,

मैंने आपके द्वारा प्रसारित प्रोग्राम रेडियो पर सुना । इसके बारे में मैं कुछ लिखना चाहता हूँ, बताना चाहता हूँ । हिन्दू विवाह अधिनियम 1955 के बारे में मुझे ज्यादा ज्ञान तो है नहीं कि उस अधिनियम में क्या-2 शर्तें थी मुझे खुशी है कि आप इस नियम में कुछ संशोधन करने जा रहे है आज समाज बदल रहा है जो गाँवों की पुरानी रीति रिवाज रूढ़िया बदलती जा रही है जो समाज की प्रगति में बाधक थी । समाज रीतिरिवाजों में ये विवाह भी एक प्रमुख बन्धन है । यह बन्धन पवित्र बन्धन है लेकिन इस बन्धन में कुछ त्रुटिया आ गयी है । कुछ मनुष्य विवाह विच्छेद कर बैठते है इसके अलावा भी कुछ और त्रुटिया है जैसे बालविवाह; दहेज प्रथा, तलाक, बहु पत्नी विवाह, बहु पतिविवाह इत्यादि इन सब बुराइयों को रोकने के लिए सबसे पहले 1955 में एक अधिनियम बना जिससे कुछ सुधार जरूर हुआ यदि वास्तव में देखा जाय तो इन अधिनियमों से कुछ नहीं होने वाला है तो ये नाममात्र के है । ये समस्याएं तब तक नहीं सुलझ सकती जब तक कि खुद हो लोग इन समस्याओं को नहीं समझते और इन समस्याओं को अपनी समस्या नहीं समझते, समाज में हमेशा महिलावर्ग का शोषण होता आ रहा है लेकिन आज के युग में महिलाओं को उनके अधिकार वापिस दिये जा रहे जिन अधिकारों को पुरुषों ने छीन लिया था (यह बात जो मैंने वैसे ही लिख दी है, मैं जो कहना चाहता हूँ, उन्हें यहाँ से लिख रहा हूँ)

जितना महत्व इस युग में पुरुषों का है उतना ही महत्व महिलाओं का है । महिलाओं को पूरे अधिकार मिलने चाहिए यदि शादी होने के बाद कोई पुरुष अपनी पत्नी को छोड़ना चाहता है तो वह अपनी पत्नी को तभी छोड़ सकेगा जब उसकी पत्नी पूरी तरह प्रसन्न हो यदि पत्नी प्रसन्न नहीं है तब वह पुरुष दूसरी शादी करने की कभी नहीं सोच सकेगा । इसी प्रकार यदि कोई महिला अपने पति को छोड़ना चाहती है तो वह बिना अपने पति की आज्ञा के बिना दूसरी शादी नहीं कर सकेगी । कानून इस प्रकार का होना चाहिए कि अधिकार बराबर-2 रहे यदि महिलाओं को अधिकार बराबरी से अधिक दिये जाते है तब

भी विवाह विच्छेद की समस्या बढ़ जायेगी । कभी-2 ऐसा होता है कि कोई लड़की अपने पति को पसन्द नहीं करती और वह दूसरी शादी को सोचती है तक कि करा भी लेती है और यदि वह बेचारा पुरूष कुछ अड़चन पैदा करता है तो उसे मरवा देती है । कभी-2 ऐसा होता है कि लड़की पढ़ी-लिखी होती है उसकी शादी अनपढ़ से हो जाती है तो ऐसी स्थिति में लड़की लड़के को पसन्द नहीं करती । विवाह विच्छेद की समस्या अन्त में पैदा होती है जहाँ तक हो सके विवाह विच्छेद के बाद दोनों वर्गों (लड़का व लड़की) की शादी दो वर्षों तक नहीं होनी चाहिए क्योंकि इस अवधि में दोनों वर्गों को कुछ ठेस पहुचेंगी । दोनों को विच्छेद की कीमत का पता चल जायेगा इस अवधि में उनके मस्तिष्क ठन्डे हो जायेंगे फिर वे आगे भूल नहीं करेंगे । एक पुरूष एक ही महिला से शादी कर सकता है और एक ही लड़की एक ही लड़के से शादी कर सकती है अगर कोई पुरूष सन्तान प्राप्ति हेतु दूसरी शादी करना चाहे तो पहली पत्नी की इच्छा लेनी जरूरी है दूसरी शादी होने के बाद यदि पहली पत्नी से सन्तान पैदा हो जाती है तो दोनो स्त्रियों के बच्चों को समानता के अधिकार प्राप्त होना चाहिए । विवाह में जाति कोई प्रश्न नहीं होना चाहिए । लड़का पैदा होने के बाद विवाह विच्छेद नहीं हो सकता यदि विवाह के बाद एक वर्ग की मृत्यु हो जाय तो दूसरा वर्ग शादी कर सकता है । यदि एक लड़का पैदा होने के बाद लड़के की माँ की मृत्यु हो जोये तो पिता लड़के के जीवित रहते दूसरी शादी नहीं कर सकता । ऐसा न होने से लड़का का जीवन अन्धकार हो जाता है ।

समस्याऐं तो अनेक है उन्हें दूर करना मुश्किल है । जैसा आप चाहे वैसा करें ।

नमस्कार

भवदीय

ओम पाल सिंह

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CONFIDENTIAL

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ORIGINAL IN HINDI

SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 55

(Comments/suggestions received from Chaudhury Karam Singh, Village Kamalpur Ronan, Distt. Karnal)

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1. The marriageable age of the girl and boy should be at least 20 and 25 respectively. It will help the country to check population.

2. The amount of the gift or dowry to the bridegroom should be restricted to Rs.51/- or Rs.101/- as was allowed in past customs of Hindu religion.

3. More than three gold ornaments should not be given to the bride from both the parties from her parents or her in-laws.

4. If murder of divorce is attempted in the lust of dowry, the guilty should be punished for a time of Rs.10,000 or 5 years imprisonment.

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ज्ञापन संख्या 55

सेवा. में

प्रिय लोक सभा सचिव व अन्य लोक सभा के सदस्य जी,

सभी को मेरी तरफ से हाथ जोड़ कर प्रणाम ।

प्रिय सभी सदस्यों से यह निवेदन है कि शहरों की अपेक्षा गांवों में भी दान-दहेज लेने संबंधी तथा छोटी आयु में लड़के और लड़कियों की 60% छोटी आयु में शादी करने का बहुत ही प्रचार है । इस दुराचार को रोकने के लिए मैं अपनी तरफ से भारतीय वर्तमान (मौजूद) सरकार को लिख कर भेज रहा हूं, जो निम्नलिखित है :

1. लड़की की आयु कम से कम 20 वर्ष हो, और लड़के की आयु कम से कम 25 वर्ष हो । इस से कम न होनी चाहिए । क्योंकि जनसंख्या के हिसाब से भारत का संसार में दूसरा स्थान है ।

2. अपने पहले हिन्दु धर्म की रस्म के अनुसार दान और दहेज नकद रकम शादी हुए लड़के को 51 रु. या 101 रु. दान या दहेज के रूप में दिया जाता था । अब भी इस से ज्यादा दान व दहेज लेने या देने की अनुमति न दी जाये ।

3. लड़की के लिए उस के माता-पिता व उस के सास-ससुर दोनों ही की तरफ से तीन जेवर से अधिक जेवर देने की अनुमति नहीं देनी चाहिए । लड़की का एक जेवर हाथ में, एक पांव में और एक कान का जेवर होना चाहिए इस से अधिक जेवर देने दुराचार समझना चाहिए ।

4. शादी करने के बाद शहरों की अपेक्षा गांवों में भी काफी लड़के दान-दहेज लेने-देने के बारे में विवाहित लड़कियों को जान से मारने या तलाकनामा लिखने की कोशश करते हैं ।

मेरी तरफ से केन्द्रीय सरकार को यह सुझाव है कि ऐसा करने वाले को कम से कम 10000 रुपये जुर्माना और 5 वर्ष की कड़ी सजा देनी चाहिए ।

धन्यावाद

भवदीय,

चौ. कर्म सिंह सुपुत्र छज्जू राम ग्राम
कमालपुर रोड़ान, डा0 संधोहा जिला
करनाल 132001 (हरियाणा)

दिनांक 27.1.81

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CONFIDENTIAL

ORIGINAL IN HINDI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 56

(Comments/suggestions received from Shri Din Dayal Gupta, Advocate, Collectory Court, Bulandshahar)

Marriage, Dowry, Divorce, Population are the subjects which are related to each other. If we are able to control on any one, the others will automatically be controlled.

He has suggested to simplify the procedure of marriage. . There should be an offices at district level who should be authorised to appoint some officers at block level. These officers could be from among the lawyers. The marriage should be performed in the presence of a Tehsil Level Officer and two of his subordinates. Some amount should be deposited by both the parties in the Govt. Treasury and a prize should be given to an ideal Happy Couple.

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दीन दयाल गुप्ता
एडवोकेट
कचहरी कचहरी (बुलन्दशहर)

दिनांक 26·1·1982

आदरणी सचिव
लोकसभा शोध संग्रहालय
नई दिल्ली

मैंने आपके विज्ञापन को सुना जिसके सन्दर्भ में मैं बहुत सूक्ष्म जानकारी के रूप में इस पत्र के द्वारा प्रेषित कर रहा हूँ क्योंकि अति-विषय बड़ा ही विस्तृत व रोचक हो । सभी की यही इच्छा होती है कि दहेज न दिया जाए, तलाक न हो, शादी में सुख समृद्धि बनी रहे, सन्तान उत्पत्ति कम हो ।

यह सब मानसिक रूप से प्रत्येक मानव समाज चाहता तो रहता है परन्तु व्यावहारिक रूप से बहुत चिन्तित होकर भी नहीं रोक पाता है

दरअसल बात यह है कि <u>विवाह-दहेज-तलाक-जनसंख्या</u> एक ही पहलू व एक ही बाप की सन्तान है । अगर हम किसी एक पर काबू पा जाते हैं तो अगले स्तर पर अपने आप प्रतिबन्ध लग जाय । उदाहरण - आज की पीढ़ि सुन्दरता चाहती है तथा संरक्षक दहेज चाहते हैं । आखिर क्यों - आज नौजवान पढ़ी भी हवान है क्योंकि उसका कोई लक्ष्य नहीं है । इसी कारण वह दहेज के चक्र में फँसकर अपनी विलासात्मक उपभोग करता है । तथा दाम्पत्य जीवन में आग लगा बैठता है । तथा अपनी इच्छानुसार कोई ठोस निर्णय नहीं ले पाता ।

दरअसल इस सब को प्रतिबन्धहमारे कानून ने भी नहीं किया है । तथा ना ही खुली छूट दी है । विवाह-दहेज-जनसंख्या पर बहुत सुझाव है । परन्तु ये सब सुझाव हमारी मान्यताओं पर व कानून पर भी निर्भर करते है । विवाह के सम्बन्ध में मेरा उदाहरणार्थ एक सुझाव है कि विवाह की प्रक्रिया सुगम बनाई जाय जिसके लिए प्रत्येक जिला स्तर पर एक अधिकारी नियुक्त हो जो अपने जिले के खण्डों के हिसाब से कुछ और अधिकारी नियुक्त करे जो वकीलों में से तथा प्रत्येक तहसील पर एक अधिकारी, दो अन्य सहयोगी अधिकारीयों के साथ विवाह सम्बन्ध कराये । जिसमें वे अधिकारी जमा राशि के रूप में हो तोपहले से कुछ राशि सरकारी कोष में जमा करावें जो बाद में एक आदर्श दाम्पत्य जीव वाली गृहस्थी को इनाम के रूप में दे । वैसे सुझावार्थ आप हमें साक्षात्कार के लिए बुलावें तो हम आप को विस्तृत जानकारी दें ।

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CONFIDENTIAL

ORIGINAL IN HINDI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 57

(Comments/suggestions received from Shri Nirmal Singh S/o Shri Sohan Singh, Village Dera Mali Wala, P.O. Amin, Distt. Karnal (Haryana))

When a couple is not in a position to lead a harmonious life and there is a difference of ideas, they lose their social respect. If husband and wife are prepared for divorce, it should be granted immediately.

Dowry system should be eradicated and accepting or giving of dowry should be an offence.

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ज्ञापन संख्या 57

सेवा में,

सचिव,

नई-दिल्ली,

श्री मान जी,

सविनय निवेदन है कि मैंने सुना है कि आप हिन्दू विवाह अधिनियम में संशोधन कर रहे हैं और आप आम जनता का मत लेना चाहते हैं । मैं भी इस के बारे में अपने विचार पेश करना चाहता हूं और अगर आप मौका दें तो मैं साक्षात्कार के लिए भी आना चाहता हूं । मेरे विचार में हमारे हिन्दू विवाह अधिनियम में निम्नलिखित कमियां हैं :-

जब किसी जोड़े की जिन्दगी की गाड़ी सही ढंग से नहीं चलती और उन के विचारों में मतभेद हो जाता है तो वे समाज की नजरों में गिर जाते हैं । अगर वे तलाक के लिए रजामन्द होते हैं तो उन्हें तलाक उसी वक्त मिल जाना चाहिए । न्यायाधीश साहिब को चाहिए कि अगर वो दोनों अदालत में आते हैं तो उन के विचार सुन कर बिना किसी साक्षी के उन को तलाक की मंजूरी दे दें जैसा पश्चिमी देशों में होता है ।

दहेज की प्रथा को जड़ से निकाल देना चाहिए । इस दहेज के लालच में कई देवी जैसी बहनों का जीवन मिट्टी में मिला दिया है । दहेज लेना और देना और 100-200 आदमियों की बरात लेकर जाना कानूनी जुर्म होना चाहिए ।

मेरा अपना तजुर्बा है कि इस में लड़कियों को तरजीह दी जाती है चाहे कसूरवार लड़की हो फिर भी लड़के वालों को दबाया जाता है । आज कल की लड़कियां जो जबर्दस्त करती हैं अपने पति को तंग करती हैं उन में हमेशा अन बन रही है । हमारे समाज का ये रिवाज है कि जब माँ-बाप बूढ़े हो जाते हैं तो उन को अपने बेटे का ही सहारा होता है मगर लड़की कहती है कि मैं न तो सास ससुर की रोटियां पका सकती हूं और न ही उन के कपड़े धो कर दे सकती हूं तब लड़के के लिए मुश्किल खड़ी हो जाती है और घर नर्क बन के खड़ा हो जाता है नर्क क्या तबाह हो ही जाता है ।

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अगर लड़की का भी कसूर हो तब भी लड़के वालों को उस का खर्च देने को कहा जाता है जब कि लड़का अपना ही खर्चा बड़ी मुश्किल से चलता है । इस हालत में लड़की वाले अपनी लड़की को घर बिठा लेते हैं और लड़का मारा मारा फिरता रहता है ।

ये मेरे विचार हैं । अगर आप मुझे साक्षात्कार का मौका दें तो बहुत अच्छा होगा मैं आप का बहुत आभारी हूंगा । अगर मुझे अपने विचार प्रकट करने का मौका दिया जाए ।

धन्यवाद

भवदीय,

निर्मल सिं /स० सोहन सिं

गाँव-डेरा काली वाला

पो० - अमीन

जिला - करनाल (हरियाणा)

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(ORIGINAL IN HINDI
SUMMARY IN ENGLISH)

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO.58

(Comments/suggestions received from Dr. Ved Raj S/o Shri Girvar Singh, Purvi Pichhala Mohalla, Distt. Burana, Muzaffernagar, U.P.)

He has suggested that the Hindu Marriage Act 1955 should not be amended in any form because there is a provision of divorce after seven years of the decision of the case by the court.

The above provision is also helpful in family planning and serves the national interest.

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ज्ञापन संख्या 58

विवाह विधि (संशोधन) विधेयक, 1980 संबंधी
संयुक्त समिति

जन॰26 "गणतन्त्र दिवस समारोह मुबारक हो"

सेवा में

श्रीमान सचिव महोदय,
संसद सभा, संसदीय सौध,
संसद भवन, नयी दिल्ली

मान्यवर,

अभी कुछ रोज हुए आकाशवाणी देहली से हिन्दू-विवाह-विच्छेद के बारे में प्रसारण हुआ था कि आप सुझाव दीजिए सामाजिक कार्यकर्ता के रूप में।

विषय: जो हिन्दू विवाह-विच्छेद एक्ट 1955 में बना था

कृपया इसे ज्यों का त्यों रखा जाय। क्योंकि इसके अन्तर्गत जब केस कचहरी के अन्तर्गत प्रवेश करता है और जब तक केस चलता है उसके भी सात वर्ष बाद में विवाह-विच्छेद करने की मजिस्ट्रेट द्वारा अनुमति दी जाती है तब ही कोई भी विवाह विच्छेद का केस तय हुआ माना जाता है। इसमें संशोधन न किया जाय क्योंकि यह परिवार-नियोजन के हक में पड़ता है। जितना भी विवाह-विच्छेद देर में होगा उतने ही बच्चे कम उत्पन्न होंगे और जनसंख्या भी कम बढ़ेगी जो देश के लिये हितकर होगा, और समृद्धिवर्धक भी सिद्ध हो सकेगा। गलती के लिये क्षमा।

आपका विश्वासपात्र
एवं हितैषी:
डा॰ वेदराज, सुपुत्र श्री गिरधर सिंह,
पूर्वी पिछाला-मोहल्ला-बुढ़ाना,
तहसील-बुढ़ाना, पोस्ट आफिस आप
जिला-मुजफ्फर नगर (पू॰पी॰)

दिनांक
29॰1॰82

नोट:- कृपया नाम गोपनीय रखें।

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(ORIGINAL IN HINDI
SUMMARY IN ENGLISH)

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 59

(Comments/suggestions received from Smt. Vimla Devi, Jaipur)

The period of unreconciliable marriage should be three years, as it is not possible for the couple to reconcile after three years of seperation.

The children must be kept with either of the two whose source of income is more.

A Bill in this regard should be passed as early as possible.

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ज्ञापन संख्या 59

श्रीमान सचिव महोदय,
लोक सभा
पार्लियामेंट हाऊस एन एक्स
नयी दिल्ली

मान्यवर महोदय,

हिन्दु विवाह अधिनियम में संशोधन

निवेदन है कि मुझे अंग्रेजी के समाचार पत्र के माध्यम से यह विदित हुआ है कि सरकार हिन्दु विवाह अधिनियम में संशोधन करने पर विचार कर रही है और यह संशोधन असाध्य रूप से टूटी हुई शादी की धारा को जोड़ने पर किया जा रहा है । उस पर मेरे विचार निम्नलिखित है :-

1· असाध्य रूप से शादी टूटने का समय तीन साल ही देना जावे । क्योंकि इतने समय अलग रहने के बाद पति पत्नी एक साथ नहीं रह सकते क्योंकि उनमें भावनात्मक एवं विश्वास की जडें खत्म हो जाती हैं ।

2· बच्चों के बारे में मेरा ख्याल है कि अगर पत्नी की आय ज्यादा है तो पत्नी के पास रहना चाहिये अगर इसके विपरीत है तो पति के पास रहना चाहिए जिससे बच्चों का लालन - पालन ठीक तरह से हो सके ।

3· मेरे विचार से इस कानून को जल्द से जल्द पास कराने के पर्याप्त करवाने की कृपा करें । जिससे आने वाले समय में अपने हिसाब से जीवन निर्वाह कर सके ।

सधन्यवाद

प्रार्थीया

विमला देवी
नमक की मंडी
किशन पोल बाजार
जयपुर ।

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM No.60

RESOLUTION PASSED BY WOMEN'S ORGANISATION AT THEIR MEETING HELD ON 12 FEBRUARY, 1982 (RECEIVED BY LOK SABHA SECRETARIAT THROUGH ALL INDIA WOMEN'S CONFERENCE) NEW DELHI.

RESOLUTION

This Meeting of the Women Organisations given in the attached list* resolves that the Marriage Laws (Amendment) Bill, 1981, as introduced in Lok Sabha on 27.2.1981 is not desirable at the moment keeping in view the Social conditions of Indian Women. It is further resolved that further detailed study and research in the social and economic condition is necessary before any such provision is introduced in the Marriage Laws. This is specially so when divorce by mutual consent has been introduced only in 1976.

At the same time it is felt that the law relating to division of property at the time of grant of divorce needs to be amended immediately to protect the right of women.

* 1. Association ofmedical women in India.
2. Bharatiya Grameen Mahila Sangh.
3. Guild of services.
4. War Widows Association.
5. Purbosree Mahila Samity.
6. Subhadra Butalia.(Karmika, Steee Sangharsh).
7. Matia Mahel Balak Mata Centre Jama Masjid, Delhi.
8. Bhartiya Garmeen Sangh.
9. Delhi Social Welfare Advisory Board.
10. Saraswati Vidalaya, Ansari Road, Saraswati Bhavan,
11. Sakhi Sangam, Saraswati Bhavan, Ansari Road, Delhi.
12. Social Health in India.
13. Inner Wheel Club of Delhi(Mid West).

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 61.

Comments/suggestions received from Mrs. Lajvanti Yunus, Lajvanti & Associates, Defence Colony, New Delhi

Both Acts i.e. Hindu Marriage Act and the Special Marriage Act are fairly modern and progressive and they serve the cause of justice, but it is in the implementation of these laws that the lacunae exist. Most women who have to face the unfortunate situation of a separation or a divorce do not get their legitimate share, either in property, or in the form of an allowance from the husband or spouse for the obvious reasons. Going to court is the privilege of a few well to do persons. There are other weightier reasons; we function and have to survive. in a society which is male oriented to say the least. Men not merely influence public opinions of social behaviour, they can very easily influence social and moral opinions against a woman. The crux of the question regarding the present law is the share in the property or income of the husband. My own view is that the share of the wife or daughter of any community should not be linked to any religious community law. The personal laws of some communities are still medieval because they are semi religious in nature. The laws pertaining to marriage, divorce or separation, property rights guardianship of minor children should be seen in the larger context of civil laws, and not in the compartentalised Acts governing different religious communities.

The Family is the real base of society, and woman has had to suffer all types of disabilities for the sake of family honour or saving face, or for the higher reason of safe-guarding the good name of the children. The sacrifices of

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an Indian woman, wife or mother are proverbial. The most modern professional women do not want to imitate the libertatian ethics prevalent in the West, as they are naturally of, an affectionate and family oriented nature. I am not advocating womens' lib or Era type of legislation. But I do think that it is high time that such a vital aspect of social life should be left to the separate personal laws of religious communities. But in order to bring up certain communities, Parliament could incorporate certain clauses which are healthy or beneficial from the laws which govern, for example the Muslim community. They would ten feel or realise that their personal laws are being held in esteem, or those clauses which are worthy of esteem. Therefore I believe that Parliament could now, after due consideration of all factors which affect family life in society, enact a comprehensive Indian Marriage Act which should be applicable to all Indians retrospectively. Civil matters should no longer be the domain of religious enactments from the past.

If most women do not speak, it is because they carry a load of tradition which enjoins on them to remain self sacfificing 'Sitas' and 'Savitris'. The very word 'right' is taboo among women and privately they say what rights do we possess? It is well known that divorces are more common now, and many educated women go to court for getting their rights, but the protracted procedure and the accusations made by both parties neither help them nor the children. On the contrary they are harmful to all concerned. The proposed law should be more enlightened and eradicate the ignominious aspects or the accepted reasons for a divorce. Family Courts with legal counsellors should be separated form the existing courts to help the couples, either in saving the marriage which has broken down, or in meting out justice to the parties. The welfare of the children should be the main concern of the Family Court. Everybody knows that when passions are roused sweet reason dies and what remains is degradation and shame for all those involved in the dispute.

The law should be comprehensive and universally applicable to all Indian citizens. There should be no options for anybody. The different communities would see in such a measure a good and sound policy and a better life for their women and children.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 62

[Comments/suggestions received from Shri J.M. Mittal, Principal Jaswantgarh, (Rajasthan).]

Various section of Hindu Society spread throughout the length and breadth of the country possess different customs.regarding marriage and divorce, which are still enforced by the family elders and caste elders.

It is the duty of an individual to maintain his spouse but if he does not wish to live with him, no power on the face of the earth can compel him to do so at the most he can be forced to pay subsistence.

As divorce laws are controlled by these rules, people adopt other ways, just as keeping women and calling them house maid. Hence Government should repeat these rules and let marriage and divorce should be decided by the family elders.

Please study the example:

Ram married Sita. After marriage sita found that Ram is suffering from T.B. Leprosy (or impotent or having illicit relations or without any apparent cause) deserts Ram or does not want to live with Ram or vice-versa.

If both parties mutually agrees to depart, law should not interfere. But if one party departs, or remarriages, the first marriage naturally dissolves, the family elders puts moral pressure on the parties to go alon, or the parents may sue for subsistence.

There should be no laws:

1. To repeal all these customs by one law .
2. As marriage is a personal affair it should more be covered under personal laws of freedom.
3. If one does not like the other temperamentally, he should not be forced to live with the other by legal force.
4. The delay in law courts have aggravated the situation and hence let these things be governed by social customs and merely not by laws.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 63

[Comments/suggestions received from Assistant Secretary, The Bar Council of India, New Delhi]

The Council considered the Marriage Laws (Amendment) Bill, 1981 and was in complete agreement with the proposals contained in the Bill.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN HINDI
SUMMARY IN ENGLISH

MEMORANDUM NO. 64

[Comments/suggestions received from Mrs. Versha Bedi Neerja, Janak Puri, New Delhi]

1. 'Divorce' is a social problem and should not require lawyer services as criminals do. Procedure should be most simple. The court should arrange for application form of Re.1/- to Rs.5/- not more than that. This form should be in simple Hindi and English. It should have columns for applicant's name, address and reasons for divorce. The arrangement should be of such a nature so that these forms could be directly produced before the judge.

2. Judicial separation period shall not be compulsory for the 'Divorce' especial if the applicant man and woman have attained the age of 30 years and 25 years respectively. Their cases should be decided within a short period of time so that they may get remarried. If the court considers the period of judicial separation necessary then it may be of minimum 30 days and maximum 90 days.

3. The reasons for 'Divorce' may be very trivial such as insulting attitude towards each other and each others relation abusing, beating etc. and they all must be considered because in family life very petty things matter much. If the forms are filled in jointly by the wife and the husband, the court should grant divorce immediately without any proceedings therefor.

4. There should be a gap of 30 days only between the date of filing the application for divorce and the decree therefor. The couple can settle their quarrel before the date of the decree by filling up a form jointly and then their 'Divorce' should be assumed and not effected. If after some years the couple wishes to live together on submission of the decree issued by the court the judge should permit them for 'remarriage'.

(127) (6)

5. If at the time of divorce the woman attains the age of 30 years, then whether she applies for the divorce or her husband wishes so, her maintenance expenses must be meted out by him if she does not earn or she is not in a government service. If she remarries then this arrangement may be ended.

6. Both may get the permission for divorce and remarriage as well, after the birth of a child or children, but they will be put in the custody of such parents only as is willing not to remarry. Whoever may take the children but the expenses of their education should be meted out by both of them. Both must have equal rights. If both of them do not want to take the children then they may be put in the custody of the court and their expenses must be deposited by both of them in the court.

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विवाह विधि (संशोधन) विधेयक, 1981

संबंधी संयुक्त समिति ।

ज्ञापन सं०

तलाक, कानून और संशोधन

"विवाह" स्त्री-पुरुष को साथ रहने, शारीरिक संबंध स्थापित करने व सन्तान उत्पन्न करने की, समाज द्वारा दी गई एक स्वीकृति, आशीर्वाद व मान्यता का नाम है । विवाह द्वारा पती-पत्नी के बीच एक ऐसा रिश्ता तय हो जाता है जिसका अर्थ दोनों का आपस में प्रेम, सहयोग, सहानुभूति व त्याग है । दोनों एक दूसरे के दुख-सुख के साझीदार बन जाते हैं । दोनों के कई कर्तव्य एक दूसरे के प्रति हो जाते हैं जिसकी पूर्ति स्वरूप ही दोनों को कुछेक अधिकार भी एक दूसरे के ऊपर हो जाते हैं । अब देखना यह है कि यदि केवल उपरोक्त लिखी बातें ही विवाह की वास्तविक सार्थकता जाहिर करती है तो यदि यह सब दोनों के बीच में समाप्त हो जायें तो इस "पवित्र बंधन" को "विवाह" जैसी शब्द की सार्थकता भी एकदम अर्थहीन हो जाती है । यदि पती-पत्नी के बीच प्रेम की जगह घृणा, सहानुभूति की जगह क्रूरता व ईर्ष्या जन्म ले ले तो क्या अर्थ रह जाता है इस बंधन का । क्या ऐसे दो व्यक्ति को जो आपस में बेहद घृणा करते हैं एक दूसरे को सूरत तक नहीं देखना चाहते । क्या ऐसे दो व्यक्तियों को जबरदस्ती प्रेम करने के लिए कहकर एक घर में बंद कर दिया जाये तो क्या यह मानवता का उपहास नहीं ? सरासर क्रूरता नहीं ? एक तरफ तो सरकार ने "परिवार नियोजन" के अन्तर्गत लोगों के दिमाग में यह कूट-कूट कर भर दिया है कि बच्चे भगवान की देन नहीं है । हमारा अपनी ही देन हैं । इन पर रोकथाम लगाना कोई पाप नहीं तो फिर कितने दुर्भाग्य की बात है कि हम जब उस प्राकृतिक संरचना को तो (जो बिल्कुल स्पष्ट है कि किसी प्राकृतिक शक्ति द्वारा ही संभव है) हम अपने द्वारा संभव मानते हैं लेकिन विवाह जैसी संस्था (जो कि अपना

ही हमारा चुनाव होता है। को ईश्वर द्वारा तय "संयोग" की बात कहते हैं। कितना बड़ा मज़ाक है यह मानवता के साथ ? सच तो यह है कि हमें "विवाह" को भी "परिवार नियोजन" की तरह नये दृष्टिकोण से देखना चाहिए। समय बहुत बदल गया है। परिस्थितियां बहुत बदल गयी है परन्तु हम भारतीयों को सोचने का दृष्टिकोण आज भी वही हजारों वर्ष पुराना है। समाज वही तरक्की करता है, प्रगति करता है जो समयानुसार अपने में परिवर्तन व संशोधन करता जाता है।

भारतीय लोग शिक्षा, रहन-सहन, वेशभूषा के दृष्टिकोण से तो काफी आधुनिक हो गये हैं परन्तु "विवाह" जैसे शब्द को आज भी बहुत पुराने दृष्टिकोण से देखा जाता है आज भी किसी स्त्री या पुरुष का कोर्ट-कचहरी चढ़ना बड़ी शर्म की व डूब मरने की बात समझी जाती है। कोर्ट को इंसाफ मांगने का मन्दिर न समझ कर चोर-बदमाशों का अड्डा मात्र समझा जाता है। "कोर्ट" शब्द का समाज में कोई "सम्मान" या "स्थान" न होकर उसे "कसाई खाना" जैसा गंदा समझा जाता है। ऐसे में यदि कोई स्त्री या पुरुष कोर्ट चढ़ते हैं तो इसे मामूली बात नहीं समझना चाहिए। उनका कोर्ट चढ़ना इस बात का प्रमाण है कि वे दोनों बेहद मानसिक यातना भुगत चुके हैं परन्तु अब आगे और सहना उनकी मानसिक व शारीरिक शक्ति के बाहर है इसीलिए दोनों इस तनाव से हमेशा के लिए मुक्त होना चाहते हैं चैन की सांसे लेना चाहते हैं। घर, रिश्तेदारों व समाज द्वारा दी गई बदनामी भी वो सहने को तैयार होते हैं परन्तु उस "बंधन" को और बोझे की तरह ढोना उन्हें मंजूर नहीं होता। क्या उस समय कोर्ट का फर्ज नहीं होता कि उन्हें जल्दी से जल्दी इस भयावह स्थिति से उभारे ताकि उनकी शक्ति का व्यर्थ ही ह्रास न हो। परन्तु कानून इसके उल्टा करता है। वर्षों ही उनके फैसले लटकाये रखता है। जिसके फलस्वरूप एक दुख से छुटकारा पाते पाते उन्हें और कई नये पैदा हुये कष्टों व दुखों का भी सामना करना पड़ता है। विशेषकर स्त्रियों को बहुत ही। आर्थिक कष्ट तो सबसे बड़ा कष्ट है जिन्हें सुलझाने के चक्कर में स्त्रियों का घरवाले, आसपड़ोसी जी भर कर शोषण करते हैं विशेषकर वकील। जो स्त्री के पास पैसा न होने पर उसका बारिक शोषण

कर नाज़ायज फायदा उठाते हैं । मुकदमें को इस लम्बी अवधि में स्त्री अपना सब कुछ खो बैठती है । धन, यौवन, सम्मान और उम्र । स्त्री एक ऐसी स्थिति में पहुंच जाती है जब कोई भी उससे विवाह करने को राज़ी नहीं होता । घर वाले उससे ऊब जाते हैं और सरकार के पास ऐसी स्त्रियों के लिए कोई नौकरियां "रिजर्व" में नहीं होती । ऐसी स्त्रियों का एक बहुत बड़ा हिस्सा दिशा से भटक जाता है और फिर समाज उसे अपने माथे का कलंक कहता है । पति जैसे दुष्ट व्यक्ति से छुटकारा पाने को चाह में नारी को समाज में कितने ही लांछनों से और संघर्ष करना पड़ता है । इसका जिम्मेदार कौन है ? समाज, सरकार या अदालत ? शायद सबसे पहले अदालत ही है । क्यों ऐसे फैसलों को लम्बा खींचा जाता है । क्या अदालत ऐसे पति पत्नी को जो तलाक चाहते हैं उन्हें नासमझ, नादान या फिर मूर्ख समझती है । यदि तो ऐसा समझती है तो वही "महामूर्ख" है । कारण यह है कि पहली बात तो आजकल विवाह बाल अवस्था में न होकर पूरी समझदारी की अवस्था में होते हैं । तो ऐसी आयु में किये गये फैसलों का कोई महत्व होता है, अर्थ होता है । व्यर्थ की बात नहीं होती ।

दूसरे आज कल के अधिकांश पति-पत्नी शिक्षित होते हैं । अपना भला बुरा वो खूब समझते हैं । उनका जो भी फैसला होगा वो अपनी भलाई के लिए ही होगा । कोर्ट को उनके फैसले पर लम्बा-चौड़ा विचार करने की आवश्यकता नहीं होती ।

तीसरा आजकल अक्सर प्रेम-विवाह होते हैं जिसमें लड़का-लड़की एक दूसरे से काफी हद तक परिचित होते हैं । यदि प्रेम-विवाह न हो तो माता-पिता द्वारा भी तय की गई शादियां काफी ठोक बजा कर की जाती है । एक-दूसरे के विषय में काफी हद तक जानकारी हासिल करने की कोशिश की जाती है यदि इन सब बातों के बावजूद भी दोनों में एडजस्टमेंट या अंडरस्टेंडिंग नहीं हो पाती तो यह समझ लेना चाहिए कि कभी हो ही नहीं सकती । क्योंकि सब कुछ जान लेने के बाद भी जब नौबत सेपरेशन या तलाक तक की आ जाती है तो कारण चाहे बड़े हों या छोटे, विचारणीय अवश्य ही होते हैं । कानून इसमें कोई मदद नहीं कर सकता । यदि जरूरत ही

दोनों को बांध कर रखा भी जाता है तो परिणाम आत्महत्या या हत्या ही होता है । जल कर मरना, फांसी लगा लेना या नींद की गोलियां खा लेना यह सब हमें रोज देखने सुनने को मिलता है । रोज पति द्वारा या सुसराल द्वारा बहुओं को जला डालने की, जबरदस्ती मार डालने की खबरें आती हैं इसका कारण बिल्कुल स्पष्ट है कि जो पुरुष स्त्रियों से छुटकारा पाना चाहते हैं उन्हें नहीं रखना चाहते मगर कानून उन पर जबरदस्ती हावी होता है तो वो सोचते हैं तलाक के लम्बे-चौड़े चक्कर में कौन पड़े ? जल्दी से जल्दी पत्नी से छुटकारा पाने के लिए वो ऐसे घिनौने कार्य कर बैठते हैं । पत्नी का जीवन तो नष्ट करते ही हैं, अपना तथा बच्चों का भविष्य भी अधर में लटका लेते हैं । यदि तलाक जैसा सरल रास्ता उन्हें मिल जाता तो शायद ऐसा कभी न होता । दूसरी ओर स्त्रियां पति व सुसराल वालों के जुल्म से तंग आकर स्त्रियां मुक्ति के लिए मायके भागती हैं । वहां उन्हें प्यास व दिलासा भी मिलता है । कई बार माता-पिता बेटी के दुख को समझते हुये तलाक दिलवाने के लिए कोर्ट के दरवाजे भी खटखटाते हैं परन्तु कोर्ट ऐसे फैसलों को वर्षों लगा देता है । आज के आर्थिक विषम युग में जहां जिंदगी का एक-एक दिन गिन-गिन कर काटा जाता है, वर्षों काटना कितना यातनापूर्ण होता है कितना कष्टकारी ? ऐसे में माता-पिता व लड़की के भाइयों का उत्साह ठंडा पड़ जाता है । लड़की के माता-पिता तथा भाई-भाभियों को जबरदस्ती गले पड़ा ढोल सी लगने लगती है वो सोचते हैं जब तक फैसला न होगा तब तक तो उसके दूसरे ब्याह की उम्र भी निकल जायेगी फिर तो उन्हें सारी उम्र घर में बिठाकर खिलाना पड़ेगा । बस, इतना सोचते ही वो आपे से बाहर हो जाते हैं और लड़की को तरह-तरह के कटाक्ष कर दुखी करने लगते हैं । लड़की के साथ छोटी बहनों या भाभियों द्वारा तरह-तरह का दुर्व्यवहार किया जाता है । परिवार के सभी सदस्य चाहते हैं कि वो वापिस वहीं लौट जाये । ऐसे में लड़की भी सोचती है जब इतना दुख ही सहना है तो पति के घर में ही क्या बुरा है । अन्याय व जुल्म तो दोनों ही तरफ है । इस प्रकार लड़की वापिस लौट जाने का फैसला करती है । ध्यान रहे, यह फैसला उसके मस्तिष्क का या आत्मा का नहीं केवल

परिस्थितियों का समझौता पात्र है । यह समझौता अंत में लड़की के माता-पिता को महंगा ही पड़ता है जब लड़की वापिस ससुराल लौट कर जाती है तो पति उससे पहले से भी बदतर व गंदा व्यवहार करने लगता है । अदालत में उसके जाने की खुन्दक उसकी चमड़ी उधेड़-उधेड़ कर करता है । तरह-तरह का शारीरिक कष्ट दिया जाता है । कई घरों में तो लड़की को कई-कई दिन तक भूखा रखा जाता है । इतना अमानवीय व शर्मनाक व्यवहार यदि लड़की कठोर हुई तो सह जाती है यदि भावुक हुई तो आत्महत्या कर लेती है । कठोर स्वभाव की लड़कियों को जो स्वयं नहीं मरती और भी बेरहमी से मार दिया जाता है । इन सब का दोष जाता है, कानून को, अदालत को । ऐसे विवाह, समाज के लिए, सरकार के लिए, देश के लिए अभिशाप है, कलंक हैं । ऐसे विवाहों द्वारा उत्पन्न संतानों का भविष्य और भी अंधकारमय है जो माता-पिता का प्यार न पाकर उनको घृणा, तनाव व कुढ़न का शिकार बनती है । ऐसे परिवार समाज में आदर्श परिवार नहीं कहे जा सकते । ऐसे परिवारों पर देश को गर्व न होकर, शर्म महसूस होती है । ऐसे विवाहों को तोड़ देना ही बेहतर है इसमें न केवल पती-पत्नी का ही भला है बल्कि उनसे उत्पन्न होने वाली भावी सन्तान व दो खानदानों (लड़की व लड़के के माता-पिता का भी भला है । यदि कानून तलाक के नियम को ढील दे दे तो इससे कितने दुखी, जीवनों का उद्धार हो जायेगा । कानून की उनपर यह बहुत बड़ी मेहरबानी होगी । तलाक संबंधी कुछ सुझाव पेश हैं जिनको व्यक्तिगत रूप से आवश्यकता अनुभव की गई जो निम्नलिखित हैं :-

1. प्रथम तो "तलाक" एक "सामाजिक" मसला है इसे "क्रीमनल" की तरह वकीलों की कोई आवश्यकता नहीं होनी चाहिए । तलाक के लिए "प्रार्थना पत्र" के रूप में अदालत द्वारा ऐसे फार्मों की व्यवस्था की जानी चाहिए जिसका मूल्य 1 रु॰ से लेकर 5 रु॰ तक हो इससे अधिक नहीं । यह फार्म हिंदी व अंग्रेजी की सीधी-सादी भाषा में होना चाहिए । इसमें प्रार्थी का नाम, पता व तलाक का कारण मुख्य रूप से हो सकता है । ऐसी व्यवस्था हो कि ऐसे फार्म कोई भी प्रार्थी सीधे न्यायधीश के पास ले जा सके । इस व्यवस्था का सबसे अधिक लाभ स्त्रियों को होगा । उनका आर्थिक व शारीरिक शोषण न हो सकेगा ।

2. "तलाक" के लिए "सेप्रेशन" की अवधि बिल्कुल आवश्यक नहीं होनी चाहिए विशेषकर यदि तलाक का प्रार्थना-पत्र स्त्री द्वारा 25 वर्ष की आयु के पश्चात् व पुरुष द्वारा 30 वर्ष की आयु के पश्चात् पेश किया गया हो । ऐसी आयु में दोनों के पास अधिक समय नहीं होता । यदि "तलाक" समय से हो जाये तो दोनों को ही दूसरी शादी में कोई परेशानी या दिक्कत नहीं होगी । दूसरे इस उम्र में किया गया फैसला बचपना नहीं का जायेगा । यदि अदालत आवश्यक समझे तो सेप्रेशन की अवधि 30 दिन से कम और 90 से अधिक न हो ।

3. "तलाक" का आधार या कारण बहुत लम्बा चौड़ा न ले कर विचारों का न मिलना, स्वभाव का न मिलना, शारीरिक ताल-मेल ठीक न बैठना, आपस में प्रेम-सहयोग का न होना, एक दूसरे के प्रति सम्मानजनक व्यवहार न होना, एक दूसरे की भावनाओं को ठेस पंहुचाना या एक दूसरे के प्रति रूखा, कठोर व लापरवाही का व्यवहार करना, हर समय झगड़ा करना, गाली-गलौच करना अथवा मारपीट करना एक-दूसरे के परिवारिक सदस्यों को, मित्रों या रिश्तेदारों को गाली-गलौच करना उनके प्रति अपमानजनक शब्दों का प्रयोग करना आदि-आदि भी तलाक के आधार होने चाहिए । गृहस्थ जीवन में यह छोटी-छोटी बातें ही बहुत बड़ी दरारें पैदा कर देती हैं ।

फार्म संयुक्त रूप से (पति पत्नी दोनों की इच्छा होने पर) भरने का प्रावधान होना चाहिए इसके लिए दोनों को यह लिख देना ही काफी है कि "अडजस्टमेंट" न होने से दोनों अपनी स्वेच्छा से अलग होना चाहते हैं । फौरन, अदालत द्वारा मान लिया जाना चाहिए ।

4. तलाक व "डिक्री" के बीच 30 दिन का अंतर होना चाहिए । ऐसा प्रावधान होना चाहिएकि यदि पति-पत्नी (एक को स्वीकृति मंजूर न हो) दोनों चाहें तो डिक्री से पहले एक फार्म द्वारा समझौता कर सकते हैं । उनका "तलाक" हो चुका न समझा जायेगा । "डिक्री" मिलने पर ही "पूर्ण संबंध विच्छेद" माना जायेगा । ऐसे ही "डिक्री" के बाद भी यदि पति-पत्नी कुछेक वर्षों पश्चात् समझौता होने पर साथ रहना चाहें तो एक प्रार्थना पत्र (फार्म) न्यायाधीश के सामने प्रस्तुत करके, साथ रहने की अनुमति प्राप्त कर सकें । तब तक के लिए उन्हें "डिक्री" कोर्ट में ही जमा करा देनी होगी । न्यायाधीश की अनुमति ही पुन: विवाह समझ लिया जाये इसके लिए दुबारा मंदिर-मस्जिदों में जाकर पाखंड रचाने की जरूरत न पड़े ।

5. तलाक के समय यदि स्त्री की आयु 30 वर्ष हो चुकी है तो चाहे तलाके के लिए प्रार्थना पत्र वह स्वयं दे या उसके पति की इच्छा हो उसके खर्चे का प्रबंध उसके पति की आय में से किया जाये यदि वह न कमाती हो, अथवा नौकरी सरकारी न हो आदि-आदि । यदि उसका विवाह संभव हो गया तो खर्चा बंद किया जा सकता है । (परन्तु इतनी आयु के बाद (तलाकशुदा स्त्री से कम ही भारतीय लड़के विवाह करने को तैयार होते हैं ।)

6. बच्चों के या एक बच्चा होने पर दोनों को तलाक व पुन: विवाह की अनुमति तो दे दी जानी चाहिए परन्तु बच्चों को रखने की प्राथमिकता उसे ही मिलनी चाहिए जो पुन: विवाह का इच्छुक न हो चाहे वह स्त्री हो या पुरुष । जो बच्चों के भविष्य के लिए अपनी इच्छाओं का त्याग कर सके या फिर जो आर्थिक रूप से पूर्ण रूप से सशक्त हो या फिर बच्चों का झुकाव व प्रेम जिसके प्रति अधिक हो । बच्चे किसी के भी पास रहें परन्तु बच्चों का खर्चा

उनके पालन पोषण का कर्तव्य दोनों का समानरूप से हो । दोनों को अधिकार भी समान हों । यह नहीं कि बच्चे यदि पत्नी पाल रही है तो वे उन्हें केवल अपने ही बच्चे समझे पुरुष का अधिकार न हो या फिर पुरुष पाल रहा हो और पत्नी को अधिकार न दे । अंत तक दोनों का समान अधिकार रहे परन्तु यदि कोई अपने अधिकार को दुरुपयोग करता है तो उसका अधिकार छीन लिया जाये कर्तव्य वैसे ही रहें । यदि माँ कमाती है तो/भी बच्चे अपने पास रखने पर पति की आय का कुछ भाग उसे बच्चों के लिए मिलना ही चाहिए । यदि बच्चे पति रखता है और पत्नी कमाती है तो पत्नी की आय का भी कुछ भाग बच्चों को मिलना ही चाहिए । यदि बच्चे दोनों ही अपने पास न रखना चाहें तो अदालत द्वारा उनकी शिक्षा किसी अच्छे स्कूल में माता पिता द्वारा मिली आय के आधार पर तय करके दी जानी चाहिए । खर्चा अदालत में जमा किया जाना चाहिए ।

अंत में तो मैं यही कहूंगी कि "तलाक" एक बहुत ही गंभीर समस्या है । इसका सीधा प्रभाव मानवता व देश पर पड़ता है । इस पर सरकार को बहुत ही गंभीरता से सोचना चाहिए व ठोस कदम उठाने चाहिए । इस समय तलाक शुदा स्त्रियों का एक बहुत बड़ा वर्ग कष्ट भोग रहा है जिसमें से अधिकांश महिलायें शिक्षित हैं परन्तु सरकार की तरफ से उनके लिए कोई शाद कार्यक्रम या योजना नहीं है । न ऐसी स्त्रियों के लिए घरों का प्रबंध है न नौकरियों का । कितनी ही ऐसी महिलायें (जो 30 से ऊपर हैं) नारकीय जीवन व्यतीत कर रही है । एक पुरुष द्वारा ठुकरा दिये जाने पर उन्हें सारा समाज; ठुकरा देता है । यहां तक कि रिश्तेदार व मित्र तो दूर रहे उसके अपने परिवार के सदस्य भी उसे नफरत की दृष्टि से देखते हैं । उसे "होन" समझने लगते हैं । पुरुष के साथ ऐसी समस्यायें कम पेश आती हैं क्योंकि हमारे भारतीय समाज में पुरुषों को उम्र के बारे में कहावत भी है कि "घोड़े व पुरुष की उम्र नहीं उनकी सेहत देखी जाती है ।" इसीलिए तो पुरुष प्राचीन काल से ही 65 वर्ष की आयु में भी 15 वर्ष की मासूम बच्ची के साथ विवाह

रचने का अधिकार रखता आया है । पुरुष पैसे के कारण भी सशक्त होता है । और पुरुष का पहली स्त्री को छोड़ देना कोई दोष भी नहीं समझा जाता । इसीलिए पुरुषों का विवाह तो हो ही जाता है (बहुधा) परन्तु भारतीय समाज में जहां आज एक कुंआरी लड़की के लिए वर देखते-देखते माता-पिता बेहाल हो जाते है वहां "तलाकशुदा" लड़की का क्या हाल होगा स्पष्ट ही है।। भारतीय युवकों में अभी तक इतना साहस नहीं आया कि वे कुंआरी लड़की से विवाह का लोभ छोड़कर "तलाकशुदा" या "विधवा" स्त्री का हाथ थाम सके । आज भी भारतीय लोग तलाकशुदा लड़की को देखकर नाक-भौं सिकोड़ लेते हैं । उसे ऐसी दृष्टि से देखा जाता है मानों वो "महादुश्चरित्रः" नारी है । चाहे वह बिल्कुल ही निर्दोष ही क्यों न हो । ऐसी स्त्रियां कई प्रकार के शारीरिक व मानसिक रोगों के शिकार हो जाती हैं । क्यों नहीं सरकार एक स्वास्थ्य समाज की स्थापना करने का विचार करती ? क्यों नहीं सरकार ऐसी स्त्रियों में जो "हीन-भावना" का शिकार हो जाती हैं उनमें आत्म विश्वास जगाने के लिए उन्हें आर्थिक रूप से अपने पैरों पर खड़ा होने के लिए प्रबंध करती है क्यों नहीं ऐसे "होस्टलस" का प्रबंध करती जहां यह घर, मुहल्ले व रिश्तेदारों से दूर, उनके कटाक्षों से दूर, खुशहाल जीवन व्यतीत कर सकें । जहां सब स्त्रियां एक सी हों ताकि वो एक-दूसरे से हीन न हो सकें । दुखी होने के नाते सब एक दूसरे का दुख बांटकर एक नये स्त्री समाज की स्थापना कर सकें । जो आधुनिक दृष्टि से स्वस्थ समाज हो ।

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CONFIDENTIAL

ORIGINAL IN MARATHI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO.65

[Comments/suggestions received from
Shri Ramesh Anand Bari of Jalgaon, Maharashtra]

1. The parents of bride and bride groom should submit an affidavit to the effect that they would not pay or accept dowry.

2. Every marriage should be registered.

3. A law should be enacted and enforced prohibiting bearing of children within two years of marriage. Tubectomy operations should be made compulsory after having two issues.

4. A married couple following the above law should be given loans and other concessions by the Government. One of them should be given a Government job.

5. Only those boys and girls who attain stipulated age of marriage should be allowed to get married.

6. Social Welfare Organisations should enlighten Society reg. marriage laws and benefits of following them. Those who contravene marriage laws should be punished.

7. The parents of bridegroom should be made responsible for the safety and protection of bride during her life time.

8. The law prohibiting polygamy should be strictly observed by all castes and religious groups in the country.

9. Marriages must be solemnised in a simple way and unnecessary extravagance must be curbed.

10. There should be provision of "Brides Life Insurance". If a bride dies in a suspicious situation, the bridegroom should be penalised. The insured amount should be paid to the brides parents. Half of the Estate of bride-groom should be given to parents of bride.

11. Special courts should be set up to deal with problems arising out of strained marriages.

12. Dowry Prohibition Scheme should be effectively implemented.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(17)

MEMORANDUM NO. 66

[Comments/suggestions received from Dr. R.A. Darbari, Consultant in Surgery & Urology, Tirathram Shah Hospital, Delhi (4 Mahadev Road, New Delhi)]

Limitation period:

The Parliament in the year 1976, provided a speedy disposal of a matrimonial dispute by the trial court within a period of six-months irrespective of any consideration, for the Legislators did realise the mental torture, agony, pain and the psychological impact in the broken matrimonial home, produced in the prolongation of proceedings in a divorce petition for a number of years, which trial of the facts and circumstances in this long run gets converted into a trial of their patience and pocket. In framing this rule of the law, in a matrimonial dispute, they equally balanced the equilibrium in favour ofthe parties to enable them to rehabilitate and reshape themselves to a new harmonious life and home, much before it becomes meaningless and the entire exercise becomes illusory.

This particular provision praooxically is being violated in increasing frequency by the judiciary and the members of the legal profession in the present set-up of our legal system to the frustration and bewilderment of the litigants. Notwithstanding the escalations of petitions under the matrimonial laws, a definite departure is being constantly observed in the approach of persons engaged in the practice and implementations of the letters of law to the convention and in the upkeep of this arithmatical limitation period as a culpable act, to which our legislature should be made accountable.

Taking refuge under the procedural bottlenecks, is a stale phenomenon in a petition of such a sensitive nature, and as a matter of Law, no second adjournment should be allowed to either erring party unless a fool-proof, well substantiated and unchallangeable cause is advanced by him, in the absence of which the matter should be decided ex-party . This practice is in vogue in England and United States, where such petitions are tried for the dis-solution of marriages of indians living in those countries under the Hindu Marriage Act, 1955.

..2/-

2. Section 13 (1) (ia) of the Hindu Marriage Act, 1955, as modified upto Ist July, 1976.

The Parliament in their amendment of the Hindu Marriage Act, 1955, incorporated 'Cruelty', as an additional ground for divorce. What amounts to cruelty has not been defined, thus an ambiguity has been left to the interpretation and whim of judicial chair as an individual with his inherent powers of discretion.

When a matter under the Hindu Marriage Act, is carried on for a couple of years, the wholesome act becomes by itself much more cruel to the disillusionment of the party who pleaded 'Cruelty' as a ground for divorce. India is a signatory to the Declaration of Human Rights, which lays down in a part "No one shall be subjected to torture or cruelty", and in a matter like this the romance about human rights losecredibility if in practice the protectors of Law themselves commit cruelty and torture in prolonging the proceedings, which undoubtly produces much deleterious social consequences.' Thus the entire rhetoric exercise in relying on this newly incorporated ground 'Cruelty' becomes an enigma.

I would therefore suggest, that our legislators must see that no such cruelty is projected by those who are responsible for the administration of justice. Strict adherence to the limitation period of six-months should be made mandatory under the statue.

3. Irretrievable broken marriages:

Marriage in between the two varieties of the Human race is a bondage, socially permitted to consumate cohabitation. It is an emotional tie rather than a mechanical affair, which binds the spouses to compromise in their respective positions in a matrimonial home. Once it is broken and fissured, to the extent that they redress their grievances before the Court of Law for divorce, it is implied that they must have exhausted all their channels, energy, patience, tolerance and /bearance to their limits in adjudicating their grievances and in adjusting themselves to bring about harmony in their home to nullity. Any amount of efforts, sincere or otherwise, under the statuary provision provided for in the existing Hindu Marriage Act 1955 - Under Section 23(2) - requiring the Trial Judge to bring about a re-conciliation in between the parties, is bound to failure and rightly it has invariably met this fate, Matting under constrained circumstances becomes an unaccomplished biological affair with associated implications in aggravating hatred to desperation.

/for

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As such this clause, Section 23(2) needs to be revoked, in totality, and the vary idea of our legislatures to incorporate "Irretrievable Broken Marriages" as an additional ground for 'Divorce', should be duly legislated as their first business, without any further delay.

4. Section 24, of the Hindu Marriage Act, 1955.

Majority of women in India still are unskilled, what with meagre education, sub-dued intelligence and limited sphere of activity for no biological disparity. They are the bonded maid, a baby sitter, an ayah and a cook. Physically weaker to men quality, has been subjected to mass exploitation by him, resulting into further detoriation in their mental faculties, with hardly any virtues left to rehabilitate themselves, when they are thrown out of a matrimonial home. A great majority of divorced women have been observed starving, more specially when their possessions have been snatched away by the husband.

Though the existing Hindu Marriage Act, 1955, provides, under Section 24, Maintenance pendente lite and expenses of proceedings, but it appears ineffective, when this payment is grudged and the order passed by the trial court is contested with zeal and sole motive to harres the wife in any way.

I would suggest to advance more powers to judiciary to take cognizance of its default and to award imprisonment and/or confiscate the assets of the husband with fine.

5. Section 25, Permanent alimony and maintenance.

In the light what has been stated above, at the time of passing decree on a petition made to the court by the husband for divorce, he shoulo be made to pay a definite sum in-total to the wife, calculated on evaluation of the total assets held jointly by them at that revalent time.

Periodical payments of alimony and maintenance in its sub-section (1) should be repealed.

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Similarly there should be no such consideration of change in the circumstances, or of re-marriage either by the wife or the husband, by the over-burdened court to peep into modify or rescind any such order as provided for in its Sub-section (2) and (3).

6. Section 27 of the Hindu Marriage Act, 1955.

It is often seen exceedingly difficult to prove by the party claiming restoration of his or her property at or about the time of marriage that it was actually possessed by them as gifts or presents. In absence of such proof the judiciary gets puzzled to operate within the meaning of this Section, and the intention of the letters of law to prevent multiplicity of litigation in respect ofthese properties, is defeated at the grass roots. With the present inflation rate in the country, and the prevailing tendency of hoarders black-marketiers and Tax-evaders, to accumulate unaccuounted money and spending it in providing fabulous gifts at the time of marriage of their sons and daughters, would be curbed, if every marriage would be legislated to be registered in the office of Registrar of Marriages, along-with the items of presents made by them as anobligatory procedure under the Law.

This procedure would not only invoke the present infructious Anti-Dowry Act, but would also help the court in not speculating for any such provisions in the decree with respect to any property presented at or about the time of marriage, which may belong jointly to both the husband and wife.

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CONFIDENTIAL

ORIGINAL IN HINDI

(SUMMARY IN ENGLISH)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 67

/ Comments/suggestions received from Shri Ram Krishna Saraf, Raniganj /

In the case of the irretrievable breakdown of marriage a couple should live separately for three years.

The father of the girl also must be given the right to oppose the application of divorce.

Unless a compromise is arrived at regarding the welfare of children and their education, decree of divorce should not be granted.

If one of the party is unemployed and have no source of income, the decree of divorce should not be granted.

In addition to this he has given some more suggestions:-

1. We want amendments in the marriage Laws (Amendment) Bill, 1981 but this bill affects only those marriages which are performed according to Hindu rites, it should also have effect on the registered marriages as well.

2. In the case or the irretrievable breakdown of marriage a decree should be granted only:

   (i) when the wife is educated upto the tenth standard;

   (ii) if 30 years have elapsed after marriage;

   (iii) if the amount spent by the husband on their marriage has been returned.

   (iv) financial arrangements have been made for uneducated and unemployed children.

   (v) the share of wife and children had been given to them from the property.

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3. If the couple has been living separately for five years and the wife does not live with her parents. The wife can prove that she is financially sound for separation.

The decree of divorce should not be granted in these special circumstances:-

(i) If the wife is not educated upto tenth standard.

(ii) if the wife is below 40 years of age.

(iii) if the wife and children are not independent financially.

(iv) if the marriage has been performed according to the Hindu rites where they have promised to live together.

(v) If the husband wants to remarry.

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विवाह विधि संशोधन विधेयक, 1981
संबंधी संयुक्त समिति

ज्ञापन संख्या

माननीय अध्यक्ष

विश्व हिन्दु परिषद
विश्व के 80 देशों में विद्यमान करोड़ो हिन्दुओं
का संगठन
बड़ा बजार, रानीगंज
10·2·82

श्री सत्यदेव कोडा,
मुख्य विधायी समिति अधिकारी
लोक सभा सचिवालय
नई दिल्ली ।

माननीय

विषय : विवाह विधि संशोधन विधेयक, 1981 -

आपके पत्र नं· 8/4/3/81 सी·दो ता· 30·1·82 के जवाब में हमारे इन सुझावों को विधेयक में स्थान दें ।

अधिनियम -1 में

इसका संक्षिप्त नाम - हिन्दू विवाह विधो (संशोधन) विधेयक, 1981 के कारन यहां हिन्दु विवाह अधिनोयम 1955 के आधार पर है और मुसलमान और कृस्तानों को छोड़कर केवल हिन्दुओं पर ही लागू है इसलिए इसमें हिन्दू नाम जरूर जोड़कर इसको स्पष्ट रूप दिया जाये ।

अधिनियम-2 में कालम 2 में -

इसमें तीन वर्ष को निरन्तर कालावधि तक अलग अलग रहे हैं - में 3 (तीन) वर्षों को पूर्ण करें । और अलग अलग निरन्तर रहे हैं यह भी हो - कठिनाई के आधार पर अर्जी का विरोध करने का पत्नो को अधिकार - में पत्नो के साथ पत्नो के पिता को भी इस आधार पर अधिकार दिया जाये कि विघटन से उसकी वित्तीय कठिनाई भी होगो । प इसलिए इसका प्रतिवाद करने का अधिकार पत्नो के पति को भो दिया जाये । पत्नी के पिता की वित्तीय कठिनाई का भी समाधान होना जरुरो माना जाये कारण विवाह खर्च उसने किया और विघटन के बाद वो प्रभावित कर दिया गया । यह उसके ऊपर अविचार पुर्नकार्य है । जो भी वित्तोय सम्बन्धित पक्ष है । अपत्यों को प्रभावित करने वाली विवाह विच्छेद की डोक्री 133 न्यायालय 13ग के अधिन विवाह विच्छेद को डोक्री तब तक पारित नहो करेगा ज[illegible] उसका समाधान नहो हो जाता कि ऐसे अपत्यों के जोनको जन्म ऐसे [illegible] से हुआ है भ रन पोषण आर शिक्षा (जोड़ा जाय) के लिए.....

(ख) अविवाहित और विधवा पुत्रियां जीन के पास अपनो संभाल , विवाह के (जोड़ा जाय) वित्तोय साधन नहीं है -

(ग) और जिनके पास अपना संभाल और व्यवसाय (जोड़ा जाय) लिए वित्तीय साधन नहो है ।

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1954 का 43

§30§ §2§ कम से कम पांच वर्ष §दो§ अलग अलग अपने अपनी सम्पत्ति का हिस्सा लेकर §जोड़ा जाय§ अलग अलग रहे हैं । 28§ख§ विवाह के विघटन के परिणामस्वरूप उसे और उसके पिता को §जोड़ा जाये§ गंभीर वित्तीय कठिनाई उठानी पड़ेगी ।

§12§§ख§ उन पक्ष का दो तथा सम्बन्ध संतानों तथा पत्नी के पिता §जोड़ा जाये§ और अन्य व्यक्तियों के हित में है - विघटन परिणामस्वरूप प्रत्यर्थी और उसके पिता §जोड़ा जाये§ को गंभीर वित्तीय.....

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§क§ अप्राप्तवय और बेकार §जोड़ा जाये§ सन्तानें

§ख§ अपनी संभाल - शिक्षा और विवाद §जोड़ा जाये§ वित्तीय साधन नहीं हैं ।

§ग§ जिनके पास अपने संभार और व्यवसाय §जोड़ा जाये§ के लिए वित्तीय साधन नहीं है ।

प्रश्न सूची

§1§ हमें इससे सहमति है कि संशोधन दो पर आज हमारा संविधान धर्मनिरपेक्षता पर आधारित है और इसमें हिन्दू के धर्म द्वारा किये गये विवाहों पर प्रभाव पड़ता है इसलिए इसको उन विवादों पर लागू किया जाये जो हिन्दू धर्म से न होकर रजिस्ट्री से किये गये है ।

§2§ §1§ पत्नी 10 कक्षा तक शिक्षित हो -

§2§ विवाह किये 30 वर्ष बित गये हो -

§3§ पत्नी के प्रति को उसका विवाह खर्च लौटाया गया हो -

§4§ अशिक्षित संतानों और बेकार संतानों के लिए पर्याप्त धन दिया गया हो -

§5§ पत्नी और संतानों का हिस्सा सम्पत्ति से दे दिया गया हो -

§3§ दोनों पक्ष 5 वर्ष तक अलग अलग रहे और पत्नी अपने पिता के घर नहीं रहे । पर स्वतन्त्र रह कर प्रभावित करे कि वो विघटन के लिए सक्षम है ।

§5§ हां -

§1§ पत्नी के 10 कक्षा से नीचे तक शिक्षा की स्थिति

§2§ पत्नी की 40 वर्ष के नीचे की व्यस्क की स्थिति

§3§ पत्नी के अस्वावलम्बी और उसके संतानों के बेकारों की स्थिति

§4§ हिन्दू धर्म के अनुसार जन्म भर के साथ रहने की देवताओं के समक्ष प्रतिज्ञा की हुयी स्थिति

§5§ पति के पुनः विवाह करने की लालसा की स्थिति -

धन्यवाद ।

प्रार्थी,
राम कृष्ण सर्राफ
अध्यक्ष

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CONFIDENTIAL

ORIGINAL IN HINDI
(SUMMARY IN ENGLISH)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 68

/ Comments/suggestions received from Shri Surendra Pal Singh, Sirsa, Haryana /

Following are the suggestions for amendments in the Marriage Laws (Amendment) Bill, 1981:-

1. If the couple has been living separately for one year then a decree of divorce can be granted.

2. If the wife is a earning person then she should not be given any maintenance allowance by the husband and even if the court insists that maintenance allowance should be given to her, there should be a time limit for it.

3. If the wife has been living separately for two years and she is employed and has no children, the couple should be granted divorce immediately after moving application by any of the party for the same.

4. The court proceedings should not last for six months and even if an appeal is made against the judgement, it should also be decided within six months.

5. If the divorce is with consent of each other and they are both working but still the court wants to give maintenance allowance then this provision should be for one or one and a half years only and this should be applied for those cases as well which have been decided before 1981.

6. Divorce should not be granted in these special circumstances:-

   (i) If the couple has two children and both are girls.

   (ii) If the father of the wife is dead and she has no children.

   (iii) If after the marriage any one of the couple becomes disabled due to some accident.

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विवाह विधि संशोधन विधेयक, 1981
संबंधी संयुक्त समिति

ज्ञापन संख्या

सेवा में

पूज्य कौड़ा साहब जी
मुख्य निर्धारी समिति अधिकारी एवं मलान साहब जी संसद सदस्य
सभापति, संयुक्त समिति विवाह विधि (संशोधन) विधेयक, 1981.

आपका पत्र नं. 8/4 (3)/81/सो-2 दिनांक 30.1.82/10 माघ, 1903 (शक) मिला, आपका अति धन्यवादी हूं।

मैंने जब आकाशवाणी के 18.9.1981 के शाम के 6 बज कर 5 मिनट पर समाचारों में सुना कि सरकार ने 14 लोक सभा और 7 राज्य सभा के सदस्यों की कमेटी बनायी है। कि वह हिन्दू विवाह आदि नियम 1955 पर विचार कर सिफारिश दें। मुझे संसदीय कार्य विभाग ने पत्र क्रमांक 38/3/81 विधायी 89 संसद भवन 30.9.81 को 21 सदस्यों की सूची भेजी। मैंने यह सुझाव दिया कि विवाह नियम धारा 3 और 5 में संशोधन किया जाए। यह एक ऐसा विषय है और मेरा दावा है जिस पर किसी ने शिकंजे के आवाज नहीं उठाई। और यह सामाजिक बुराई है।

1. अब आप कहते है कि इसका इस विधेयक से किसी का कोई संबंध नहीं है जैसा समाचार में आया मैंने अपना सुझाव दे दिया।
2. मैंने एक साधारण नागरिक होने के नाते मार्मिक अपील की ऐसा किया जाए यह सब ठीक बात है। अगर समिति धारा 13 आदि पर विचार कर सकती है तो धारा 3 और 5 पर क्यों नहीं। मेरी मार्मिक अपील है कि आप मेरा इस संदर्भ में असाधारण सहयोग करें।

प्रश्न सूची

प्रश्न एक पर मेरा यह सुझाव है कि समय समय पर संशोधन होना अत्यन्त आवश्यक है।

1. पत्नी लगातार एक वर्ष के लिए पति के पास न आयी हो।
2. यदि विवाह रिश्तेदारों में है जिसका धारा तीन और पांच में प्रावधान है तो पत्नी का केवल पति के पास हो आना माना जाए ना कि वो भुआ, मां मामें के गयी हो या गया हो।
3. एक वर्ष का समय इसलिए है कि आर्थिक कारणों के कारण बड़ी देर से रोजगार मिलने के कारण परिवारों का विकेन्द्रीयकरण होने के कारण शादी अधिक आयु में होती है। यदि पहले 3 वर्ष इंतजार कर फिर मुकदमा यानि आयु तो खत्म हो हो जाएगी। इसलि समय एक वर्ष का होना चाहिए जो कि बहुत है।

4. सम्बन्ध विच्छेद पर यदि आवेदन पत्नी नहो करती पति करता है और पत्नी कमाई कर वेतन लेती है तो उसको रखारखाव का खार्चा नही मिलना चाहिए ।

5. यदि न्यायालय यह अनुभव करता है कि इसे ऊर्वा दिया जाए तो उसमें समय की सीमा रेखा का पर्वाधान होना चाहिए यह बहुत जरूरी है ।

6. यदि औरत से कोई बच्चा नहो है और वह एक कर्मचारी है और वह अपने पति से 2 वर्ष के लिए अलग रहती है तो किसी भी पक्ष के केवल आवेदन पर ही सम्बन्ध विच्छेद कर दिया जाना चाहिए ।

7. इस बात का प्रावधान होना चाहिए कि अदालत में केस का फैसला अधिक से अधिक 6 मास के अंदर कर दिया जाए ।

8. यदि न्यायालय के विरुद्ध अपील भी की जाए तो उस अपील का फैसला भी अधिक से अधिक 6 मास में हो जाना चाहिए ।

9. ऊर्वे की हालत में समय का निर्धारण अवश्य होना चाहिए यदि वो कर्मचारी है ।

10. यदि समझौते से तलाक होते है और न्यायालय खार्चा बांधतो है और वो कर्मचारी ह तो वह एक या डेढ़ वर्ष के लिए होना चाहिए । इससे अधिक नहीं। और वर्ष 1981 से पहले फैसलों पर भी इसे लागू माना जाना चाहिए ।

किन हालातों में तालक नहो होना चाहिए -

1. यदि दो बच्चे हैं और दोनो लड़कियां है ।
2. यदि लड़को बाप मर जाए और लड़की के बच्चा न हो ।
3. शादी के बादयदि औरत और मर्द किसी दुर्घटना के कारण अपहाज हो जाए ।

मेरा व्यक्तिगत आग्रह है । कि आप धारा 3 और 5 के संशोधन के लिए मेरा असाधारण सहयोग करें । यह कि एक ऐसा विषय है कि उसे कोई नहो उठाता है । यहां तक कि जो रिश्तेदारी में भी नहो बताते है कि हम मामे भुआ के शादी शुदा है । इस प्रकार की शादियां कंजूसी लालच व जिम्मेवारियों से बचने के लिए की जाती है । हिन्दु समाज में जिसे मन्धु महाराज की महा मान्यता है कोई प्रावधान नहो हैं । ना हि यह कस्टम है । यह शादियां सभी प्रकार से घातक है । क्या आपको व्यक्तिगत रूप से मिला जा सकता है । तो मैं आपको मिलने के लिए तैयार हूं कृपया मुझे आप 2 भिन्न भिन्न तिथियां लिखकर भेजे मैं आप को आ कर मिल जाऊंगा ।

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तर्क का संसार है । तर्क के आधार पर किसी भी विषय पर पक्ष और विपक्ष में बहुत कुछ कहा जा सकता है । परंतु इस प्रकार की शादियां जो कि एक खुला रहस्य है । समाज, को किसी प्रकार खाट रही है । जिस प्रकार दीमक लकड़ी को अत: मैं आपसे प्रार्थना करता हूं कि धारा 3 और 5 में संशोधन कर असली मामे भुआ के लड़के लड़कियां आपस में बहनों के लड़के लड़कियों के शादी पर रोक लगा दी जाएगी ।

अति धन्यवाद ।

अपीलकर्त्ता
ह0/-
सुरेन्द्र पाल सिंह
मकान नं॰ 726, बन्द गेट,
मोहल्ला राजपूत, सिरसा,
हरियाणा

दिनांक 8•2•82 पूर्णमासी

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CONFIDENTIAL

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO.69

[Comments/suggestions received from Mahila Dakshata Samiti, 2-Telegraph Lane, New Delhi - received through Smt. Pramila Dandavate, M.P.]

The Mahila Dakshata Samiti after its considered deliberations held on 6th January, 1982 on the proposed amendments to the Hindu Marriage Act and the Special Marriage Act is of the view:

a) that the introduction of an additional ground for divorce on the basis of irretrievable breakdown of marriage will not alleviate the oppression of women nor will it improve their status but instead, it will cause grave and sudden repercussions on the lives of the uniformed women of this country. It is a stark reality that women in this country have been geared to the idea that marriage is their only security and that it will ensure permanence and stability in their lives. The introduction of irretrievable breakdown will retrospectively introduce insecurity due to a wholly alien, meaningless and futile amendment.

b) that This Committee appreciates and welcomes the philosophy underlying the concept of irretrievable breakdown i.e. that it seeks to eliminate 'Matrimonial Fault' and substitute it for the 'no-fault theory'. However, the no-fault theory became the basis for irretrievable breakdown in a developed society where women were educated, geared to the idea that marriage was not the end-all and be-all of a woman's existence and where avenues of employment existed so that social absorption of women divorces in society was a relatively easy transition. To transplant the no-fault theory in the Indian setting and against the traditional concept of Hindu Marriage will accelerate and expedite the rate of divorce in a situation where men will be the petitioners for divorce since it is hardly likely that women geared to the traditional concept of marriage are likely to avail of this provision.

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The introduction of irretrievable breakdown is most unwarran ed an will lead to the absurd result of putting the cart before the hourse, since it will be the cause rather than cure or solution to the divorce rate in this country. To borrow alien concepts in order to create needless obnoxious and undersirable situations can hardly be consistent with sound legislation and the undoubtedly defiable aim of improving the situation of women in this country.

c) that the proposed bill cannot be introduced at this premature stage without full and intensive debate on what is the perspective and vision of the role of Indian women in a developing society. To introduce legislation piecemeal can only lead to further confusion. If the bill was intended to act as a catalyst for social change in order to make women self-reliant and independent and to create a new sense of 'Self' amon women, the bill is hardly likely to achieve that laudable purpose. The infrastructur for the introduction of the Bill has not been created and the necessary condition to introduce it at this stage do not exist. This Committee feels that without legal literacy, education and full employment of women, and without dissemination of the provisions of this bill amongst the beneficiaries of this purported "new deal legislaton" the bill can only be considered totally misplaced.

The Committee calls upon the Government to act according to the injunctions of the Supreme Court viz., that the bill be (a) distributed in all the several languages all over the country; (b) carry out a scientific survey which takes into account all cross sections of opinion both urben and rural all over the country.

c) Since the bill will affect vast sections of Hindu women only and will lead to a further destruction of the personal laws of Hindu women, this Committee calls upon the legislators to first introduce the "Community of Property" concept in the existing matrimonial legislation which will safeguard and ensure that Hindu women do not become destitute overnight and which will also be a step forward in the equitable distribution of property between both parties to the marriage.

We also demand that the Government undertakes, in collaboration with public organisations and academic institutions a detailed evaluation of the existing marriage and property laws affecting all communities and take prior steps to establish essential supportive measures like establishment of Family Courts, community of property and effective machinery to implement maintenance Orders, before introducing piece-meal amendments that will inevitably result in further victimisation of large groups of women, particularly in the economically weaker sections.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1961.

MEMORANDUM NO.70

Comments/suggestions received from Smt. Renuka Ray, President, Women's Co-ordinating Council, Calcutta -

We have given serious consideration to the Marriage Laws (Amendment) Bill, 1961 sent to us by the Joint Committee of Parliament which is considering the matter.

We are of the view that the provisions of this Bill may be applied to the Special Marriage Act, 1954 and that the Hindu Marriage Act be amended accordingly to provide for irretrievable breakdown of marriage as a ground for divorce after three years of separation.

We are of the opinion that in the present state of our society in India, the large majority of women are uneducated and unable to fend for themselves. Particularly in the rural areas and wherever retrogade customs which effect women are still in vogue, this would cause a tremendous hardship. It will not be sufficient to protect women ignorant of the law, to redress their grievances due to their social and economic handicaps. We have included some amendments to Clause 13D. We suggest the following additions to the Amending Bill.

We strongly recommend the initiative of the court in this matter as the wife in the vast majority of cases is unable to exercise her legal rights due to ignorance of law and lack of finance for legal action. This safeguard is essential for the protection of the wife and children as this is particularly relevant to the conditions in the rural areas in India. Section 208 of the Special Marriage Act may be amended accordingly.

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(i) We also suggest that a clause be inserted in two bills mentioned herein or a separate bill be enacted simultaneously for introducing compulsory Registration of marriages. In the present condition in our society women are being discarded by their husbands without giving maintenance or relief either to the wife or to the children of such a marriage by the ruse of denying the marriage and giving false evidence by the husbands and his friends and relatives. This occours particularly in rural areas as we know from the experience of our Legal Aid Committee which has helped a number of women to obtain relief according to the law.

(ii) Family Courts should be set up. This will not only help towards eliminating delay but will make it possible for the aggrieved parties to place their evidence without constraint when the offender is punished but harrowing details by the appelent should be in Camera. The Family Court may even bring about reconciliation and serve as a counseling media. We consider it is essential that Family Courts be set up to try cases of divorce maintenance and other similar complaints. Reconciliation will probably be possible in a large number of cases. Where it is not possible the Family Court will be in a position to guide the protect the int rests of the women and children. Such courts can ensure speedy trials and minimises the hardship of the women and children who are very often left without any financial support during the duration of the case. We suggest that before the Marriage Amendment Bill becomes operative, the Family Courts should be set up.

(iii) The irretrievable breakdown of marriage as a ground for divorces would be introduced in the personal laws of all communities residing in India, on the same lines as in the Hindu Marriage Amendment Bill and the Special Marriage Act. We should like to point out here that even in an Islamic State like Pakis an irretrievable breakdown of marriage as a ground for divorce, has been introduced in Muslim Law, making a departure from the past. In India, a secular state, we have to work towards a common codes of Social Laws and first step towards this, the Social Laws for the separate communities should as far as possible be brought into line.

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Further to amend the Hindu Marriage Act 1955 and the Special Marriage Act 1954.

Suggestions for amendment of the Bill proposed by the Women's Co-ordinating Council.

Section 13B line 19 - After line 18 insert 'the court shall ascertain whether the dissolution of the marriage shall result in grave financial hardship for the respondent and stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship consistently with the financial capacity of parties of the marriage or dismiss the case if the court is of the opinion that it would in all circumstances be wrong to dissolve the marriage.

New Clause should be added i.e.
The petition for divorce under this Act should be brought before a Family Court for which adequate provisions should be made.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 71

/ Comments/suggestions received from Secretary, Law. Free Legal Aid Committee, Jamshedpur /

The Committee begs to submit that inorder to collect the view-points of some of the inteligentsia as also of the affected persons, organised a Seminar on the 12th February, 1982, between 4-30 to 7-30 P.M. in the Sonari Community Centre Hall, Jamshedpur, which was presided over by Shri Bhuvaneshwari Prasad, District and Sessions Judge of Singhbhum at Chaibassa, and attended by a large number of distinguished guests and citizens of the town. Eminent Lawyers, Professors of Law and other connected with Social Welfare Schemes delivered speeches on the matter, and after a careful study of the opinion of these persons, FLAC submits its opinion as follows:-

1. FLAC agrees with the proposed amendment.

2. FLAC also suggests that a Leprosy is now-a-days a curable desease, it should not be a ground for dissolution of marriage by a decree of divorce, and as such this ground should be deleted from Section 13(iv) of the Hindu Marriage Act, as also from the Special Marriage Act.

3. FLAC further suggests that Section 125 of the Code of Criminal Procedure should be suitably amended so as to include any woman who has lived with a man as wife for three years should also be entitled to maintenance.

4. FLAC also suggests the following:

(a) That there may be one Marriage Conciliation Officer, not being a Court, in every Sub-division, to be appointed by the Government. The Marriage Conciliation Officer should preferably be a woman with a minimum qualification Of Law Graduate.

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(b) That the party who thinks that his/her marriage has become irretrievable, or there has developed serious differences may refer his/her case to the Marriage Concilliation Officer.

(c) On receipt of such a reference, the duty of the Marriage Concilliation Officer should be:-

(i) To investigate the reasons for the breakdown and to all that is necessary to settle the dispute between the wife and the husband;

(ii) If the Marriage Concilliation officer is satisfied, after all efforts made by him, that the parties are adamant to be separated and there is absolutely no chance of their re-union, he may recommend the case to the District Marriage Court for their separation with a declaration and stating all the facts and circumstances, as also the actions taken by him, that the marriage has broken down irretrievably.

5. FLAC also intends to suggest that the Marriage Concilliation Officer shall not keep the reference pending before it for more than six months from the date of its receipt, until and unless positive sign of amicable settleme is in sight.

6. FLAC further likes to suggest that the Marriage Concilliation Officers should be empowered to maintain a panel of Volunteers - like para - legal men, who may be requested to try to settle the disputes between the parties and on the recommendations of the Volunteers, who should be person of moral out-look and character, the Marriage Concilliation Officer should recommend to the District Court for the dissolution of such irretrievable marriages and then the District Court should pass a decree of divorce accordingly dissolving the marriage, after due examination made by it.

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VOLUNTEERS: In the opinion of FLAC, the Volunteers should ordinarily be Matriculates or possessing higher qualifications, but if any one is found to be more competent even without having such qualifications, he may also be appointed as a Volunteer, but after recording special reasons for the same in writing. They must be men of integrity and should not be connected with any Political party. They should preferably be men of the locality for which they are appointed.

7. The Marriage Concilliation Officer shall not be a Court and, therefore, regular proceedings should not be started in his office, but only Concilliation proceedings, as may be necessary should be started.

8. It shall be the duty of the Marriage Concilliation Officer to recommend towards maintenance of the children and the helpless wife. Therefore, it should be the duty of the Marriage Concilliation Officer to negotiate between the parties on the score of maintenance and the recommendations of the Marriage Concilliation Officer shall have due weight in the District Court while passing final orders.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO.72

/Comments/suggestions received from Shri P.L. Gupta, D-12, Ashok Vihar, Phas-I, Delhi-52 /

Following proposals are submitted for consideration:

(i) (a) There used to be a Practice in some communities of the Hindus (especially in the Jat Community of Haryana) according to which the widow of the deceased married the Younger brother (elder brother where there was no younger brother) even when the wife of the living brother was alive. This was a very commendable practice as it provided living means and other necessities including the occasions to satisfy sexual desire to the widow. Since there is a human element in this practice, even the wife of the brother accepting the widow did not mind the coming in of the second wife and the whole family pulled on nicely.

(b) The need for second wife is also apparent in cases where the first is not able to bear a child on account of some sort of medical defficiency in her. The non-existence of permission for a second wife in such case forces the male member to leave his own religion and adopt Islam to enable him to take another wife and beget children.

In both these types of cases, a provision should be made in the Hindu Marriage Act for a second wife subject to the condition that the first wife gives her consent.

(ii) Provision for the grant of Divorce should be made more lenient, making it oblig tory on the court of law to decide the case within a maximum period of one year. There may not be any provision for appeal in the cases relating to divorce, otherwise the sufferings of the couple go on increasing and lengthening; immoral practice may also some times arise.

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(iii) It is often seen that Hindu Male Members change their religion merely for the sake of second or 3rd wife under Islam. Change of religion is admissible under constitution; but the underlying idea behind such change is intended to be change of faith; and not a mere opportunity for a second or 3rd wife. To check the malpractice, it should be made incumbent on the Hindu changing his faith that he should not take a second wife at least for five years; non observance should be made punishable with imprisonment.

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CONFIDENTIAL

ORIGINAL IN HINDI
(SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO.73

Comments/Suggestions received from Dr. Sadhna, M.D. D.H.V. of 'Shri Ramchintsalya' Payga, Roshni Ghar Road, Laskar, Gwalior (M.P.)

The main points of the representations are as follows:-

The conditions of Indian women are quite different from the rest of the world. She is devoted to her husband's home and family members.

It is difficult to remarry as society generally do not approve of it.

Husband's act to divorce his wife should be made difficult.

The act should be suitably amended so that none of the spouse divorce each other.

We daily read in the newspapers the story of brutal assault on young brides, or as their parents are unable to meet the demand of dowry being made from the husband's side.

The following points may be incorporated in the law:-

1. To register a marriage be made obligatory. A list of items of gift should be drawn out and submitted to the Registration officer. It should be made a compulsory practice.

2. To introduce Mehar at the time of a Hindu marriage, as in the case ofthe Muslims.

3. In the case of husband and wife both being Govt. servants the consent of the other party (Husband/wife) be taken regarding good conduct of the other party in question before granting pay hike or promotion.

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4. A divorce man should be allowed to remarry but only with a widow or a divorced woman.

5. If a woman lives in suspicious circumstances, her husband should only be allowed to remarry, if at all, a divorcee lady.

6. Half salary of the husband habitual of drinking/gambling and indulging in unlawful act should be directly given up to his wife, so that she may not to seek the help of the court for payments etc., to bear the household.

7. The ownership of dowry articles should lie with the wife only and she may be allowed to keep them any where she likes.

8. A senior woman police officer should be deputed to investigate the matter where the lady (wife) is being subjected to indecent behaviour such as rape etc. by the husband's family members.

9. To end the demand of marriage proposals for an employed wife, it should be made compulsory that only once(wife and husband) be in the Govt. Service, S.C. may be exempted from this provision.

10. 'Woman Court' may be instituted to settle the pending cases.

11. Offenders in the rape cases should be ampulated and a provision to this effect should be incorporated in law. The punishment should be given in public presence particularly the black listed persons so that they may learn a lesson from it and desist from the crime.

12. The benefit of doubt should only be given to the woman concerned and the accused (husband) should not have the facility of bail; till the case is finalised;

13. Indian society is paternal one. In the case of separation, the children should be treated as of father and not for mother's. The numbers of 'Nari-Niketan' and 'Nari Surkaksha Garh' should be increased.

14. The ragging in co-education schools should be banned. These cases can be dangerous which can spoil life of a girl. Our present President is also in favour of banning this system of ragging.

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सेवा में,

श्रीमान लोक सभा सचिव,
केन्द्रीय संसद भवन,
नई दिल्ली

विषय : विवाह अधिनियम संशोधन विधेयक, 1981 में संशोधन हेतु सुझाव ।

महोदय,

मुझे दैनिक भास्कर पेपर द्वारा ज्ञात हुआ है कि 15 मार्च तक विवाह अधिनियम संशोधन हेतु सुझाव मांगे गये हैं । अत: मैं अपने सुझावों की दो प्रतियां संलग्न कर आशा करती हूं कि मेरे सुझावों को इस संबंध में संसद द्वारा नियुक्त की गयी संयुक्त समिति के पास भेजने की कृपा करेंगे ।

इस संबंध में स्वयं भी प्रस्तुत होकर अपने विचार स्पष्ट प्रकट करने को तैयार हूं ।

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लश्कर ग्वालियर
(म·प्र·)

पिन कोड नं· : 474009

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विवाह अधिनियम संशोधन विधेयक, 1981 में संशोधन हेतु सुझाव

भारतीय समाज की स्थिति विदेशों से भिन्न है । यहां समाज के हर क्षेत्र में नारियों की शारीरिक पवित्रता को आवश्यकता है । भारतीय समाज के हर वर्ग की बालिकायें युवा होते ही अपने पति और बच्चों के सम्पन्न परिवार का सपना मन में सजाया करती है । भारतीय नारी अपने पतिव्रत धर्म की रक्षा हेतु अपने जीवन तक की आहुति दे डालती है ।

भारतीय नारी की स्थिति बड़ी नाजुक होती है । पति द्वारा छोड़े जाने पर उनका दूसरा विवाह होना कठिन हो जाता है । यदि किसी प्रकार हो भी जाता है तो धार्मिक एवं सामाजिक कट्टता के कारण समाज में उन्हें वह स्थान प्राप्त नहीं होता है जो एक सुहागिन महिला को होता है । भारतीय समाज उन्हें घृणा से देखता है । सभी शुभ कार्यों में उन्हें जाने से वंचित रखा जाता है । इसी से भारतीय नारियों में दुरवानी की भावना धर कर गयी है ।

प्रकृति द्वारा नारी के शरीर की रचना भी इस प्रकार की है । कि वे अपने व्यवहार को छिपा नहीं सकती । उन्हें गर्भपात कराने को मजबूर होना पड़ जाता है जो एक महान नीच प्रक्रिया है । इससे उनके स्वास्थ्य पर बुरा प्रभाव पड़ता है । बहुतों की मृत्यु तक हो जाती है ।

सम्भ्रान्त परिवारों से फुसला कर भगाई गयी लड़कियों को उनके माता-पिता तक वापिस लेने से इंकार कर देते है । बलात्कार की शिकार हुयी महिला का जीवन ही बर्बाद हो जाता है । इसी से भारतीय महिला आजीवन किसी पुरुष के संरक्षण में रहना चाहती है । पति द्वारा त्याग करने से उनका जीवन बरबाद हो जाता है । बलात्कार की बढ़ती हुयी प्रवृत्ति ने आज नारी को पूर्ण असुरक्षित बना दिया है । दहेज प्रथा के प्रचलित होने से लड़की के मां-बाप बड़ी कठिनता से अपनी पुत्री की शादी कर पाते है फिर उनका त्याग हो जाये तो उस नारी का संरक्षण कौन करेगा ? बिचारी उस महिला को बलात्कार का शिकार बनना पड़ेगा । जिसके परिणामस्वरूप गर्भपात कराने की स्थिति उत्पन्न होगी । जिससे उन्हें मृत्यु का सामना करना पड़ जाता है । अतः विवाह अधिनियम में शादी के बाद त्याग की प्रक्रिया को इतना कठोर बनाया जाय कि पति पत्नी को त्याग करना अपने जीवन से एक महान खिलवाड़ करने वाला कार्य हो जिसे वे स्वप्न में भी सोच न सकें । साथ ही विवाह अधिनियम में ऐसी धाराओं का भी समावेश किया जाये जिससे पति-पत्नी दोनों एक दूसरे के पूर्ण सहयोगी रहे । किसी के भी द्वारा त्याग करने से दोनों का भविष्य पूर्ण अंधकारमय हो जाये । पत्नी को सताने, उसकी हत्या करने की स्थिति पैदा न हो पत्नी को अपने पति से सम्पूर्ण अधिकार सरलता से प्राप्त हो ।

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प्रकृति द्वारा पुरुषों की शरीर की रचना इस प्रकार की है कि वे अनेकों व्यभिचार करने पर भी समाज में निष्कलंक बने रहते हैं । वे चाहे जितनी भी शादियां करें उन्हें भारतीय समाज पूर्ववत ही देखता है । इसी से वे अपनी पत्नी के साथ क्रूरता एवं अत्याचार पूर्ण व्यौहार सदा निष्संकोच करते रहते हैं । प्रतिष्ठित पढ़े लिखे लोग तक शादी में दहेज न मिलने पर अपनी पत्नी को आये दिन पीटते उसके द्वारा मायके वालों से स्कूटर, टेपरिकार्ड, रेफरीजरेटर आदि कीमती चीजों की मांग करवाते, जिसके न मिलने पर पति अपना पत्नी की हत्या करने से भी नहीं चूकते हैं । आज समाज में ऐसी घटनायें रोज उठ एवं घट रही हैं ।

हिन्दुस्तान टाइम्स 17 नवम्बर 1980 में प्रकाशित हेडिंग के अंतर्गत अनेकों ऐसी घटनाओं का उल्लेख है । समाचार पत्रों में प्रकाशित विभा चतुर्वेदी नारायणी राजेश्वरी, रश्मि सुधा श्रीवास्तव की दहेज के कारण हुयी हत्यायें आज समाज में चर्चा का विषय मुख्यत: बनी हुयी है ।

एक वकील श्रीमती कपिला हिंगोरानी ने 10 से अधिक ऐसे मामले दायर कर रखे हैं जिनमें आरोप है कि दहेज के कारण महिलाओं की हत्या कर दी गयी है । यह एक ऐसा प्रश्न है जिसका हल खोजा नहीं गया तो भारतीय पढ़ी लिखी, सुशील, सदाचारी महिलायें रोज उठ मरती रहेंगी ।

हमारे महामहिम राष्ट्रपति श्री नीलम संजीव रेड्डी का कथन है "जहां महिलाओं का आदर होता है वहां ईश्वर का वास है" - "वास्तव में" भारतीय महिला कमजोर वर्ग की एक बड़ी है । अत: विवाह अधिनियम हेतु मेरे निम्न सुझाव है :-

1- सरकार एक कार्यालय स्थापित करें जिनमें शादियों के लिए रजिस्ट्रेशन कराना अनिवार्य हो । वर और कन्या वालों को लिखित में देना पड़े कि वे शादी बगैर दान-दहेज के कर रहे हैं तो समाज की बहुत सी समस्यायें हल हो सकती है ।

2- शादी में दिया दान दहेज, रिस्तेदारों द्वारा दी गयी लड़की की प्रेजेन्टस की लिस्ट वर और कन्या पक्ष के द्वारा हस्ताक्षर की हुयी रजिस्ट्रेशन कार्यालय को दी जाये ।

3- जिस प्रकार मुसलमानों में महर की प्रथा है उसी प्रकार हिन्दू विवाह एक्ट के अंतर्गत भी एक निश्चित रकम त्याग की स्थिति में पति द्वारा पत्नी को दिया जाना आवश्यक हो जो मेन्टीनेन्स से अलग हो ।

4. महिला और पुरुष दोनो, शासकीय कर्मचारी वार्षिक वेतन वृद्धि एवं उन्नति पदोन्नति तभी दी जाय जब उनका लाइफ पार्टनर (पति के केस में पत्नी और पत्नी के केश में पति) स्वयं कार्यालय में जाकर लिखित में देवे कि उसके लाइफ पार्टनर का व्यवहार पूर्ण संतोषप्रद है । इस प्रकार दुराचारी अन्यायी पुरुष अपनी पत्नी को सताने का साहस न करेंगे । दोनो ए दूसरे के सहयोगी होकर अपने दाम्पत्य जीवन को सुखी बनावे त्याग करने की स्थिति उत्पन्न न हो ।

5. जिस प्रकार एक त्याज्य महिला का पुर्नविवाह होने पर समाज उसे घृणा से देखता है उसी प्रकार यदि कोई पुरुष त्याज्य या विधवा महिला से शादी करता है तो उसे भी भारतीय समाज में पूरा सम्मान नहीं मिलता अत: कानून द्वारा यह निश्चित हो कि त्याज्य महिलाओं के पति अपनी फिर शादी त्याज्य या विधवा महिलाओं से ही करें कवारी कन्या से न कर सके । यदि करते है तो उन्हें कारावास की सजा दी जावे ।

6. किसी महिला की संदेहपूर्ण मृत्यु जैसे जल जाने, फांसी लगाने, जहर खाने, कुयें में डूबने आदि कारणों से होती है तो उसका भी पति अपनी दुबारा शादी त्याज्य, विधवा महिला ही से करे कवारी कन्या से नहीं कर सके । नियम की अवहेलना करने वालों को कारावास की सजा दी जावे । इस प्रकार पुरुष अपनी महिलाओं की सुरक्षा के प्रति सर्तक रहेंगे । त्याज्य और विधवाओं का जीवन दुबारा आबाद हो सकेगा ।

समाज में नवयुवक जिसका विवाह न हुआ हो वह त्याज्य या विधवा महिला से शादी करना पसंद नहीं करता अत: कानून द्वारा कवारी कन्या की भी शादी जिन पुरुषों ने महिलाओं की हत्या की है या पत्नी का त्याग किया है । उनसे कदापि नहीं होनी चाहिए । पुरुषों को भी एक बार शादी करने के बाद दुबारा शादी करना कठिन हो तभी वे अपनी पत्नी के हितैषी रहेंगे ।

7. अनेकों पुरुष अपना वेतन शराब पीने, जुआ खेलने, व्यभिचार करने आदि में खर्च कर देते हैं । अपनी पत्नी को घर का खर्च चलाने को रुपये नहीं देते या आवश्यक से कम देते है तो उनके द्वारा अपने पति के प्रति की गयी ऐसी शिकायत पर उसके पति के पूरे वेतन से आधी तनख्वाह काट कर हर माह उसकी पत्नी को उसके पति के कार्यालय द्वारा दिलाये जाने का प्रावधान हो । रेलवे पास अन्य मेडिकल सुविधायें भी उसकी पत्नी तथा बच्चों के पति द्वारा दिलाई जाये । भारतीय नारी अपने व्यभिचारी पति तक का भी कभी त्याग करना नहीं चाहती अत: उसके लिए यह सुविधायें कानून द्वारा दिलाया जाना सच्चे मानवता का प्रतीक है । यह कार्य पति के कार्यालय के वरिष्ठ अधिकारी के अधिकार में रहे

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कर्मचारी की पत्नी को इसके लिए कोर्ट में न जाना पड़े आज पुरुषों ने विवाह को अपनी आर्थिक आय का एक मात्र उपदेश्य बना रखा है । जिसे कानून द्वारा समाप्त किया जाना अति आवश्यक है :-

8. लड़की की शादी में दिया गया दान दहेज का सामान शादी के बाद कानून द्वारा पत्नी के अधिकार की वस्तु है । जहां वह रहे वहीं उसका सामान रहे उस सामान पर ससुराल के किसी व्यक्ति का अधिकार न रहे यदि लडकी चाहे तो अपने सामान को मायके में भी छोड सके । महिला को यह अधिकार शासन द्वारा दिलाने का प्रबंध है । जिसे जिलाधीश एवं पुलिस द्वारा उपलब्ध कराया जाये ।

9. भारतीय महिलाओं को उनके पति तथा पति के घर के अन्य लोग सताते है । यह पति के व्यवहार में फंसे होने तथा दूसरी शादी रचाने की इच्छा रखने पर देखा जाता है कि पति पत्नी के प्रति उदासीन रहता है । उस दशा में पति के अन्य भाई वगैरह उस महिला का सतीत्व लूटने की चेष्टा करते है । पति के घर की चार दीवारी के अंदर ऐसी घटनायें घटती है । बिचारी महिला ऐसी स्थिति में चसमदीद गवाह नही दे पाती । अत: वरिष्ठ महिला पुलिस अधिकारी को महिला का दुख: का पता लगाने हेतु भेजा जाये, जिसे वह निःसंकोच सब बता सके । खुफिया विभाग द्वारा सब दुषित वातावरण की जांच करायी जाये और ऐसी स्थिति में महिला के ही व्या को सत्य माना जाये कोई भी महिला किसी पुरुष पर झूठा आरोप लगा कर अपने को बदनाम नहीं करना चाहती है ।

10. आज नवयुवक कहने लगे है कि उन्हें दान दहेज नही चाहिए केवल सरकारी सर्विस वाली कन्या चाहिए । जिसके कारण अनेकों कन्यायें कंवारी रह जाती है । अत: कानून द्वारा भविष्य में शादी होने की तिथि से पति एवं पत्नी में से केवल एक ही सरकारी नौकरी में रहे । हरिजन इस नियम से वंचित रहे । ताकि सरकारी नौकरी का लाभ अनेकों परिवार के केवल एक व्यक्ति को मिल जावेगा । विवाह हेतु वर पक्ष की यह नवीन मांग समाप्त हो जावेगी ।

11. "महिला न्यायालयों" की स्थापना महिलाओं के प्रकरणों के लिए की जाय जो अलग रखे जायें, इनमें संबंधित व्यक्तियों के अलावा अन्य का प्रवेश वर्जित हो । आवश्यकता पड़ने पर जूरी बुलाकर भी निर्णय लिये जाये ।

12. महिलाओं की हत्या करने, उनके साथ बलात्कार करने वालों को अंग भंग की सजा दी जावे । दोषी को सजा आप उनका विशेष कर जिन व्यक्तियों के नाम पुलिस की ब्लैक लिस्ट में हो उनके सर सामने सजा दी जावे ताकि सजा का पुण्य उद्देश्य पुरा हो यानी दोषी को सजा मिले और अन्य लोग उस सजा को देखकर वैसा जुर्म करने का साहस न कर सके ।

13. महिलाओं को सताये जाने, उनकी इज्जत लूटने, हत्या करने आदि के प्रकरणों में कोर्ट के अंदर "सक" का लाभ महिला को ही मिले । मुलजिम को नही दिया जाय ऐसे मुलजिम को केस के अंत तक जमानत पर न छोड़ा जाय । महिलाओं को सताया जाना एक घोर अपराध माना जाय तभी भारतीय समाज में महिलाओं के साथ सच्चान्याय हो सकता है ।

14. भारत पितृ प्रधान देश है । जहां बालक बालिकाओं के पिता का नाम हर क्षेत्र में पूछा जाता है । अत: जब तक कानून द्वारा पति पत्नी का त्याग नही हो जाता है, पत्नी से उत्पन्न तीन बच्चे उसके पति के माने जाये । इसमें तर्क की कोई गुंजाइश न रहे ताकि गर्भ निरोध अथवा नव-जात शिशु को फेंक देने वाली घटनायें न घटे । (नारी स्वरक्षा ग्रह) नारी निकेतन (की संख्या बढ़ाई जाये जहां असुरक्षित होने की स्थिति में नारियों को रखने का प्रबंध सरकार द्वारा हो । वहां महिलाओं से व्यवसायी कार्य लिये जायें ताकि महिला गलत मार्ग पर न जा सके ।

15. जिन स्कूलों में है उन संस्थाओं में रैगिंग प्रथा समाप्त करायी जाये । इसकेकारण बालिकाओं के साथ अमानुषिक घटनायें घट जाती है । जिसके फलस्वरूप उन बालिकाओं का विवाह होना कठिन हो जाता है । हमारे वर्तमान राष्ट्रपति रैगिंग प्रथा के पूर्णत: विरोधी है ।

ह02/- साधना
(डा॰साधना)
"श्री राम चिकित्सालय, रोशनी घर रोड़
लश्कर - ग्वालियर (म॰प्र॰)"

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 74

[Comments/suggestions received from Shri G.V. Subbayya, 14/263, Patel Nagar, Machilipatnam-2 (A.P.).]

India did not advance to such an extent as to adopt the divorce systems pertaining to countries like Briton and United States of America. Even to-day 95% of wives are dependent on husbands. Therefore 'Divorce' point should be carefully dealth within India. Divorce should be allowed only in exceptional cases when both wife and husband come forward for it without any external pressure. Even in such cases the interests of the wife and children should be carefully safe guarded. Under any circumstances divorce should not be allowed only on the application of either party.

Negligence of wife and children by husband is very prevalent and such cases are on the increase. This is due to their immoral character by keeping concubines or by having 2nd wives either known or unknown. Dowry is another evil which is resulting in the negligence of wife and children.

Recordless Hindu marriages and seek rules of maintenance are contributing mainly to encourage divorce applications.

Registration of Hindu marriages should be made compulsory. This work should be entrusted to Hindu religious endowment department. Maintenance laws should be made very rigid. They should be able to desist husbands from neglecting wives and children without maintenance.

The maintenance section is not strong in Hindu Marriage Act of 1955. On account of heavy court fees, it is not possible for neglected wives and children to court redress under this Act. Moreover the disposal of civil cases is taking its own time, even more than 10 years in some cases. There is no proper check and scrutiny over the pending civil cases. No action is being taken on judges and Dt. Munsiffs for abnormal delays. Therefore abnormal delays in the disposal of cases on civil side are very rampart.

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Maintenance cases under Sec. 125 of Criminal Procedure Code can be disposed of early and the poor neglected wives, daughters and sons can approach courts under this Section with less cost. But the provisions of the maintenance section of Criminal Procedure Code are weak and they are not meeting with proper injustice. The procedure is not consistant with the present changed developments in society.

1. There is no proper yard stick for ordering maintenance. Thereby the magistrares are ordering very minute amounts without taking into consideration the quantum of income of the husband and the present increased cost of living. A proviso may be inserted to order maintenance allowance at the rate of 1/3rd of the monthly gross income of the husband approximately.

2. The provisions under sections 125 to 128 of Criminal Procedure Code restrict the payment of maintenance to Children (daughters and sons) to the minority period only. But a father maintains his daughters till they are married and his sons till the secure some independent earning, irrespective of their age. In these days daughters and sons are studying to the level of post-graduation in several cases. When maintenance is allowed upto minority period, only, who will maintain them afterwards? Restricting allowance to minority period only is doing much injustice to neglected daughters and sons. This restriction may be taken away and maintenance allowances to daughters may be allowed to the period till they are married and to sons till they secure some independent earning. Inclusion of this provision is very essential and important. This inclusion will certainly discourage negligence cases and automatically divorce applications. Thus maintenance chapter in Criminal Procedure Code should be made more effective.

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JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 75

/ Comments/suggestions received from All India Co-ordination Committee of Working Women (CITU) 6, Talkatora Road, New Delhi received through Smt. Vimala Ranadive, Convenor /

In order to decide whether the Bill should be welcomed or opposed, one must know the already existing provisions in regard to divorce and the change that is sought to be brought about. As far as the existing provisions in regard to divorce in the Hindu Marriage Act are concerned, divorce can be obtained by either party to a marriage, if that party proves to the Court that the opposite party, be it the husband or the wife, is (a) guilty of deserting without reasonable cause or (b) is cruel-physically or mentally or (c) is impotent, or (d) is suffering from a virulent form of communicable disease, or (e) is insane or (f) is not traceable for the last 7 years or (g) is guilty of living in adultery. The above are the main grounds among others on which a divorce can be granted now. A recent amendment to the Hindu Marriage Act provides for divorce by mutual consent of the parties also. In all the above cases except in case of divorce by mutual consent the party who wants divorce has to prove that any one of the said grounds, i.e. desertion or cruelty etc. exists and only then the court can grant a divorce. But the new section 13C requires the Court to grant a divorce unless it is proved that the marriage has not broken down irretrievably. In other words, the onus or burden is shifted on the defendant to prove the negative of the alleged ground-this is contrary to the basic requirement of our jurisprudence. Under our present system, a party who alleges something in the Court has to prove that. But under Sec. 13 C, the party who alleges that the marriage has broken down irretrievably, need not prove that fact at all but merely has to show that the parties to the marriage have lived apart for a period of three years and then the onus is shifted on the defendant to prove the contrary. Thus the new section is heavily loaded against the defendant, who in most cases would be the wife. The misuse of the provision in the absence of the onus to prove the factum of

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of breakdown on the part of the plaintiff (who would in most cases be the husband) is given a very large scope by the Amendment Bill by excluding Sec. 13C from the purview of Section 23(1)(a) of the Hindu Marriage Act. By virtue of the proposed amendment, even if the 'living apart' was entirely due to the fault of the plaintiff (husband in most cases) divorce shall be granted irrespective of the fact that the plaintiff is trying to take advantage of his own fault. Thus it will be seen that the Bill provides for an assumption that the marriage has broken down irretrievably once it is shown that the parties have lived apart for three years and nothing more. It is not as if 'living apart' is not ground for divorce under the existing law. It is certainly a ground, but under a different expression 'desertion'. The only difference is that under the existing ground of 'desertion' the party who wants a divorce-the plaintiff, will have to prove to the Court that the defendant has refused to live with him without reasonable cause and that such refusal or living apart is not due to the plaintiff's fault. As a matter of common knowledge, it is not the woman who would in most cases be the person to desert without being forced to do it by her husband or her in-laws. Thus under the present law, it is very difficult for a husband who wants a divorce on ground of desertion to prove that the wife has deserted him without reasonable cause and for no fault of his. Taking note of the realities, the number of women who voluntarily desert their husbands would be a micro-fraction of the total number of wives in our country. Hence whom does the Bill benefit? Husbands who do not want their wives for some reason or other and who would not be able to prove that the living apart was not due to any fault of theirs andthe above mentioned micro-fraction of women, who are ready to discard their husbands without any reason.

What will be the effect of such an amendment? Men who leave their innocent wives in rural areas and go to some other place in search of work or men going for long number of years for studies and in other similar situations, if they by reason of the separation and other glossy factors that they see in the urban areas may not want to go back and live with their rural wives. The Bill would only help them as they only have to show 'living apart' for whatever reason. Similarly, with the clan of greedy men going up day by day, the number of wives driven to live apart on account of physical and mental harassment for dowry is on the increase. In such cases also, the Bill would further help such men in getting an easy divorce on the ground of 'living apart'.

Does the present day social and economic condition of our society warrant such an easy passport for men (in most cases) to get out of marriages without any legitimate reasons?

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No one can deny that 'irretrievable breakdown' of marriage can be a ground of divorce. It can be, provided it is defined properly and some enquiry as to the fact of irretrievable breakdown is made compulsory with the burden on the plaintiff to prove that and also to provide adequate maintenance. It cannot be a ground when the irretrievable breakdown has to be assumed merely by reason of the fact of living apart without the plaintiff discharging his burden of proving that fact. It may be said that there are statutes like the Prevention of Corruption Act and the proposed law on rape that provide for certain assumptions or presumptions about certain facts. But in those cases the departure from the normal rule of burden of proof on the plaintiff or petitioner is made with a view to achieve social justice and public good as the crimes dealt with therein are those against society. It cannot be said by anybody that in granting divorce to a person any public good or social justice is involved. Hence, why should the normal rule of discharging the burden of proving the fact of irretrievable breakdown of marriage other than mere living apart, be not complied with?

The above are certain disturbing aspects which have to be considered deeply before coming to any conclusion about the Bill. May be, there are some genuine cases of matrimonial disharmony which are not able to get speedy justice under the present law. But the remedy for it is not an amendment like the proposed one which would only harm a large population, but reforms in the procedural aspects like provision of family courts, inclusion of women in the adjudicatory process, etc.

If even after considering the above, it is decided to amend the Marriage Laws as suggested in the Bill, the following necessary changes must be incorporated in it.

First of all, it should be noted that the amendments cover only Hindus and persons covered by the Special Marriage Act. Any amendment made in the marriage Laws of our country shouldbe made in respect of Hindus, Muslims, Christians and Parsis as well as, the amendments are necessitated by the changed social conditions, which are not peculiar to Hindus alone.

Secondly, on the substantive aspect of the matter, no one can deny that 'irretrievable breakdown of marriage' should be a ground for divorce. Because saving a marriage which has broken down completely will only result in further

harship to the parties. But we must not forget that under the present social set up, it is not the women who usually go court and with the dowry deaths and the clan of greedy men going up day by day more and more men will try to take advantage of the new Section 13C. It is therefore, necessary that the provision should be available only when the man makes adequate provision for the maintenance of the wife. Also, the Bill should give a proper definition of irretrievable breakdown of marriage.

Section 13D of the Act, which says that the wife may plead financial haroship to her in opposition to the grant of divorce at the instance ofthe husband, should be so modified as to impose a duty on the court trying the case to see that irrespective of the wife's pleadings, unless the husband makes adequate provision for the maintenance of the wife and children and gives an undertaking to that effect, no decree of divorce shall be granted. Further, in proper cases, the wife should be made entitled to a share in the provident fund, gratuity and other benefits also, apart from his salary. This is very necessary, in view of the fact that Section 13C is proposed to be excluded from the purview of section 23(1)(a).

Finally, it is suggested that there is no point in making amendments to the personal laws in matrimonial matters, in the absence of Family Courts to administer them speedily and effectively with a view to really achieving the object behind the provisions. As far as possible, women should be made a part of the adjudicators of matrimonial disputes, so that the interests of the weaker section, i.e. women and children are protected.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 76

/ Comments/suggestions received from ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION, NEW DELHI through its President Manjari Guota /

Proposed amendments to the Marriage Laws (Amendment) Bill, 1981.

In Section 2.-

In Section 13C(2) of the Hindu Marriage Act, 1955
for "that the parties to the Marriage have lived apart"

substitute " that both parties to the marriage have voluntarily lived apart"

After Section 13C(2) of the Hindu Marriage Act, 1955 add the proviso -

"Provided that no petition under this Section shall be entertained if both parties have commenced living apart after 5 years of marriage"

In Section 13C(4) of the Hindu Marriage Act, 1955

for "have lived apart" wherever occurs
substitute "have voluntarily lived apart"

In Section 13D(1) of the Hindu Marriage Act, 1955

for "and" in line 4
substitute "or"

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In Section 13D(2)(b) of the Hindu Marriage Act, 1955

(i) omit "or other persons concerned"

(ii) for "and that"
substitute "or that"

In Section 28A(2) of the Special Marriage Act, 1954

for "that the parties to the Marriage have lived apart"

substitute "that both parties to the marriage have voluntarily lived apart"

In Section 28A(4) of the Special Marriage Act, 1954

for "have lived apart" wherever it occurs

substitute "have voluntarily lived apart"

In Section 28B(1) of the Special Marriage Act, 1954

for "and" in line 4

substitute "or"

In Section 28B(2)(b) of the Special Marriage Act, 1954

(i) omit "or other persons concerned"

(ii) for "and that"
substitute "or that"

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 77

[Comments/suggestions received from Shri P.S. Subbanna, Under Secretary (Drafting), Government of Goa, Daman & Diu, Law Department (Legal Advice) Secretariat, Panaji.]

The Hindu Marriage Act, 1955 and the Special Marriage Act, 1955 have not been extended to this Union Territory of Goa, Daman and Diu. However, the Decree dated 3.11.80, which regulates the subject matters of divorce in this territory also contains provisions for divorce on, inter-alia, abandonment of conjugal domicile for three years and seperation for ten years. Decree Nos. 1 and 2 dated 25.12.1910 contains provision for protection of children. However, this Administration is in agreement with the amendments proposed in the aforesaid Bills.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 78

/ Comments/suggestions received from Shri K. Rachakrishnamurthy and 57 others, Jaggayya Peta Taluk, Krishna District, Andhra Pradesh /

The following is a suggestion given by the above persons -

that if a wife and husband had live seperately for a period of 3 (three) years having no children may be given an opportunity to get divorce without any judgement by the court of law.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 79

[Comments/suggestions received from Shri Sadashiv Bagaitkar, M.P., (Rajya Sabha), 7, Gurudwara Rakabganj Road, New Delhi./

I agree with the suggestion that there is need to amend the Hindu Marriage Act with a view to make divorce easier when prayed for. Irretrievable breakdown of marriage must be considered as valied ground for grant of decree of divorce.

The present legal mechanism in a way makes divorce difficult not easy. There prevails a peculiar social situation among the segments of Hindu Society to whom present act applies. The divorce is treated as stigma and is not looked upon as a simple break down of human relations. The system of arranged marriages makes the situation worst for women. Many a frauds are practised and even educated women are victims of this situation.

Not only mechanisms of law but also attitude of judiciary is loaded against divorce. Many a times they intervene in favour of conciliation. In our social situation it must be accepted that no woman would seek divorce unless all other efforts and trials have proved useless. In such a situation divorce must be made easier and less irksome.

It must be announced that any body approaching for divorce is not doing so light heartedly and this very fact must be considered as sufficient reason to consider divorce seriously. It will be very difficult to define breakdown of personal relations or incompatibilities and when the person concerned pleads so it has to be accepted. I do not view long period of separation as the necessary condition of granting divorce. I do not understand why one must pass through a lengthy period of mental agony, emotional upset and vaccum for obtaining a divorce.

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Presence of children must not be a bar for divorce. In fact it will be wrong to allow the children in their impressionable age to be victims in a situation and atmosphere that would only smoother them emotionally. Those who seek divorce at course must make arrangements so that children do not suffer.

I see no circumstances in which divorce must be denied even if there is irretrievable breakdown of marriage.

In a society where because of wrong religious concepts, traditions and conventions woman is a non-person and where equality of status granted to her by the Constitution is more flouted than upheld law must give all the protection exploited and suppressed section of the society. In our country divorce is not luxury. It is an aid to a woman who has no sort of protection and must be looked upon as a tool that could rationalize human relations in some small way and help a victim from being drowned in the debris of broken marriages. Easier divorce may take away a little the anachronistic misfitting of the Hindu Marriage Act.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 80

[Comments/suggestions received from YWCA of India, New Delhi through its General Secretary Miss Ivy Khan.]

The YWCA of India strongly oppose the proposed amendments to the Hindu Marriage Act 1955 and the Special Marriage Act 1954, for the following reasons:

1. The insertion of Section 13C of the Hindu Marriage Act 1955 provides that a husband or wife can petition for a divorce if they have lived separately for a period of three years and such a petition can be made on the ground that the marriage has irretrievably broken down. This provision fails to take into account th pattern life, this country family life is broken for long periods at a rticularly stretch and where migrant labourers leave their erein rural wives and children in their villages while they eas are away in search of or engaged in jobs elsewhere.

In such cases if a man decides to divorce his wife, he has only to live separately for three years, and circumstances provide many opportunities for this. Although this applies to either spouse, in the majority of cases, women will be adversely affected.

2. The proposed amendments also do not recognise the possibility that desertions which have taken place many years ago, can now be legalised by the new amendment.

3. Once the woman receives a notice from the court that her husband has filed a divorce petition on the ground of irretrievable breakdown, she may not be able to afford to engage a lawyer to contest the petition. Even if she has the courage to appear in the court, she may be too shy or frightened to speak.

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4. According to the proposed amendment, the magistrate will be given wide discretionary powers to satisfy himself on the evidence presented that the marriage has irretrievably broken down and grant a decree of divorce. There is every possibility that he/she may decide a case based on his/her own values, social background etc. There is thus hardly any safeguard that the decision will depend solely on the evidence placed before him/her.

5. Section 13D purports to establish the wife's right to oppose the petition on the grounds of financial hardship. It fails to recognise that the hardship caused will not be merely financial, but in the present context of our society, it will cause emotional suffering and social stigma.

6. Section 13E provides for the grant of maintenance to the wife and children after the divoce. However our objection is based on the fact that there is no machinery for enforcement of such maintenance. In most cases, maintenance is provided for the first few months, after which the wife has to fend for herself and the children.

We strongly feel that all laws passed must protect the large section of women and not merely a small percentage. The proposed amendments may help a small section of women but will do great injustice to the vast majority.

We suggest that a machinery such as family courts be set up where such divorce cases could be heard, and which would have jurisdiction over all matters related to personal laws. Such family courts could also ensure that legal aid is provided to women unable to afford it.

We feel that the law providing for divorce by mutual consent is adequate for the present.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 81

[Comments/suggestions received from the Delhi Administration, Delhi_7

INTRODUCTORY:

The Special Marriage Act, 1954 (Act XLII of 1954) (hereinafter called "the Act of 1954") came to be enacted by replacing the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian Nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The Act of 1954 proceeds on the basis that a marriage is essentially contractual in nature. Soon after the enactment of the Act of 1954, than came to be enacted, the Hindu Marriage Act, 1955 (Act No. 25 of 1955) (hereinafter called "the Act of 1955"). The Act of 1955 thus came out on the Statute book as the first piece of legislation taken up for enactment in the process of reforming and codifying the law relating to Hindus. That Act primarily deals with the conditions for the solemnization of a marriage and the remedies available to estranged couples. With the increased urbanisation and the changing patterns of society, there, however, still continued to persist the demand for the modification of the matrimonial law applicable to Hindus. Similar suggestions for amending the Act of 1954 also were received from the general public. The Act of 1954 being a civil law of contractual nature and applicable to all, has, otherwise, necessarily to keep pace with any reform of matrimonial laws. The question of amending the Act of 1954 as also the Act of 1955 thus came to be examined by the Law Commission. It was on the basis of those recommendations of the Law Commission that the Marriage Laws (Amendment) Act, 1976 (hereinafter called "the Amending Act of 1976") came to be enacted and the law relating to Hindu Marriages was recently streamlined with the following objectives, namely:-

(a) to liberalise the provisions regarding divorce;
(b) to enable expeditious disposal of proceedings; and
(c) to remove certain anomalies and handicaps that have come to light after the passing of the Act, of 1955.

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It was thus, for the first time, provided by the Amending Act of 1976 that dissolution of marriage by a decree of divorce could be brought out with the mutual consent of both the parties to a marriage and thus the law relating to divorce in the Hindu society was further liberalised. However, the demand from various quarters for further liberalisation of the provisions of divorce in Hindu Society continued to persist in the context of making irretrievable breakdown of marriage as a ground for divorce under the Act of 1955. The Government of India then referred the matter to the Law Commission for consideration. The Law Commission after inviting the views of the interested parties and bodies on the salient points of the proposal and after taking their replies into consideration, recommended vide its Seventy-First Report, 1978 that irretrievable breakdown of marriage may be made a ground for divorce under the Act of 1955, subject to certain safeguards. The safeguards suggested by the Commission pertain to the minimum period for which the parties to the marriages should have been living apart and to the protection of the wife and of the children. The Commission also recommended suitable amendments in the Act of 1954 so as to bring it in conformity with the latest aspirations of the modern society. It is in this background that the Joint Committee of both the Houses of Parliament on the Marriage Laws (Amendment) Bill, 1981, at their sitting held on 30th November, 1981 under the Chairmanship of Shri K. Mallanna, M.P. decided that all State Governments/Union Territory Administrations be addressed to send their comments/suggestions on the provisions of the Bill on the basis of the Questionnaire laid down in this behalf.

Comments/ Suggestions on the Marriage Laws (Amendment) Bill, 1981.

The Marriage Laws (Amendment) Bill, 1981 which is mainly based on the recommendations of the Law Commission of India as made in its Seventy-First Report, proposes to amend the Act of 1954 as also the Act of 1955 so as to provide for irretrievable breakdown of marriage as a ground for divorce thereunder subject to certain safeguards.

Under the present law, cruelty, disease, desertion, conversion, adultery and mutual consent are amongst the grounds available either to the husband or to the wife to obtain a decree of dissolution of marriage. These provisions still compel innumerable couples to live on with a tag of marriage because their cases are not covered under any of the grounds specified for divorce. Matters are made more worse because one of the parties is not inclined or opposed to give consent to divorce for personal or social reasons. Quite often, one of the parties might withhold

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consent (even when they are neither living nor ever want to live together) simply to teach a lesson or to harass the other party and block his/her way for re-marriage. There can be no denial of this fact that the proposed amendment, if enacted would provide remedy/relief in the above cases. The underlying idea behind the proposed amendment is to give relief in cases where the differences between the parties are irreconcilable and that neither of the parties are oppressed, embarrassed to live within the fabric of marriage which has become meaningless and a source of strain and tension all round. The yardstick to assess whether the marriages in fact broken is whether the parties are living together or apart.

Under the proposed amendment, it is provided that the court hearing a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition. The proposed section 13-C(5) of the Act of 1955 and the proposed section 28-A(5) of the Act of 1954 as contained in the Amending Bill further provides that a husband and wife shall be treated as 'living apart' unless they are 'living with each other in the same household' is bound to give rise to certain problems. There may be a situation where the wife is a career woman, working at a station other than that of the husband. In fact, such situations are on increase mainly due to economic constraints. Therefore, due provision or exception should be made in such cases so that neither of the parties may be in a position to take undue advantage of the situation.

Another point which deserves consideration is the provision which gives to the wife, if she is the respondent, the right to oppose the husbands divorce petition on the ground that it would result in grave financial hardship to her. The idea though laudable but appears to be somewhat inconsistent with the very object of amendment. A better solution would be to make more effective provision for the wife by way of maintenance or some other social security measure rather than marriage dissolved even when in reality no relationship exists.

In the proposed amendment, it has been provided that the court would also consider various other circumstances, including the conduct of the parties to the marriage, the interest of those parties and of any children or other persons concerned when the opposing party is the wife.

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The term "other persons concerned" being vague may create some problems. It is not defined as to what is meant by the term 'other persons concerned' i.e. whether it means relations, dependant parents or anyone else. Whatever it may be, the very idea of inducting interest of other persons in a matter where grant of divorce on grounds of breakdown of marriage is in issue, is not very sound and in all probabilities may be used for defeating the very purpose of the amendment. Besides, the safeguards provided in the Bill it would be more appropriate if it is provided in the Bill that the ground of irretrievable breakdown of marriage shall not be available to the husband who is found guilty of acts of physical cruelty towards his wife.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

SUPPLEMENT TO MEMORANDUM NO. 81

[Supplementary memorandum from Delhi Administration, Law and Judicial Department]

Introductory

The present memorandum is being submitted in the light of the discussions held by the Joint Committee of both the Houses of Parliament on the Bill at their sitting held on 1st December, 1982 under the Chairmanship of Shri K. Mallanna, M.P., and this memorandum contains the views of this Administration in relation to the definition of irretrievable breakdown of marriages and the consequences flowing from dissolution of marriages on this ground especially affecting the interests of the children of the parties of such marriages.

Irretrievable breakdown of marriage as a ground for divorce.

The Bill which is mainly based on the recommendations of the Law Commission of India as made in its Seventy-First Report proposes to amend the Special Marriage Act, 1954 (hereinafter referred to as "the Act of 1954") and also the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act of 1955") to make irretrievable breakdown of marriages as one of the grounds of divorce. In this context, the proposed section 28-A(5) of the Act of 1954 and the proposed section 13-C(5) of the Act of 1955 sought to be newly inserted in the respective Acts by the amending Bill provide, inter-alia, that a husband and wife shall be treated as 'living apart', unless they are living with each other in the same household. It was explained by this Administration in the earlier memorandum that such a provision is bound to give rise to certain problems. There may be a situation where the wife is a career woman working at a station other than that of the husband. In fact, such situations are on increase mainly due to economic restraints.

In course of discussions held by the Joint Committee at their sitting on 1.12.1982, the Hon'ble members of the Committee agreed with the above suggestions of this Administration but desired to know the form the proposed amendments of the Act of 1954 and the Act of 1955 should take so as to provide necessary safeguards. In this context, this Administration is of the considered opinion

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that a proviso in the following words may be added below the newly proposed section 28-A of the Act of 1954 and section 13-C of the Act of 1955 by way of exception so as to cover possible situations where a husband and wife might have to live apart under stress of circumstances:-

"Provided that a husband and wife shall not be treated as living apart within the meaning of this section where -

(a) A husband and wife are posted at different places;
(b) one of the spouses is under prolonged treatment including the period of convalescene after such treatment;
(c) the working conditions do not permit a husband and the wife to stay in the same premises."

Provision for protection/ safeguarding interests of dependent children.

The Bill does not contain suitable provisions for adequately protecting/safeguarding the interests of dependent children in the event of dissolution of a marriage on ground of irretrievable breakdown of marriage. The question of protection/safeguarding the interests of dependent children in such a situation should appropriately be left to the Family Courts to decide on merits of each case and taking into consideration the age of the children. For instance, small children below the age of five years whether they are male or female should ordinarily be left to the custody of the mother for a specified time limit subject to review after such time-limit has expired. In such a situation adequate provision for maintenance of the mother should also be made. In so far as the children above the age group of five years are concerned, the question of custody and maintenance should be decided after taking into consideration the provisions of the relevant Minority and Guardianship Acts so as to avoid possible legal complications. Since all such matters pertaining to dependent children will entail not only judicial but also humanitarian approach, hence such matters should be left to be decided by the Family Courts which may be manned by persons possessing not only adequate legal knowledge but also some other persons, both male and female, possessing adequate qualifications in social science and humanities. This will go a long way in adequately safeguarding and providing due protection to the interests of dependent children.

Establishment of Family Courts.

In view of the position explained above, this Administration is of the considered opinion that the establishment of Family Courts is absolutely necessary. This will help to create family atmosphere and will ensure proper social justice.

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CONFIDENTIAL

ORIGINAL IN MARATHI
(English Summary)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 82

Comments/suggestions received from Shrimati Sunanda B. Pawar, Gaon Bhag, Sangli, (Maharashtra)

Points made in the Memoranda:

1. Divorce should be immediately granted if a woman is suffering from some incurable disease.

2. If a husband and wife fail to live together for one year, it should be considered to be a sufficient ground for granting divorce to a husband and should be allowed to enter into a second marriage immediately.

3. While sanctioning maintenance allowance to a woman, the court should consider the period of stay with her husband. If a woman does not have an offspring, divorce should be granted to a husband. If a woman is earning, she should bring up children. The provision of paying maintenance allowance to a woman should be discontinued by law.

4. There should be uniform marriage Laws for Hindus and Muslims.

5. The marriage laws should give sufficient protection to men also.

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ORIGINAL IN MARATHI
(ENGLISH SUMMARY)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 83

/Comments/suggestions received from Shri A.P.Kulkarni, Lecturer, Near Mission Hospital, Niraj (Maharashtra)./

Points made in the memoranda:

1. The period of separation for the purpose of seeking divorce should be reduced to one year if the relation between a husband and wife is beyond improvement.

2. The provision of maintenance allowance is misused by some parents of girls making the life of bridegroom miserable. This practice should be discontinued.

3. A woman should not be allowed to go to court of law for seeking maintenance allowance immediately after marriage. She should live with her husband for a certain period as law would stipulate.

4. Divorce should be immediately granted if a wife has some incurable disease.

5. Present marriage laws should be so amended as to protect interests of men.

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ORIGINAL IN MARATHI
(English Summary)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

Sub Committee No. 84...

/ Comments/suggestions received from Shri Suresh D.Kokate, 216, Manglwar Peth Kokate Galli, Miraj (Maharashtra) /

Points made in the Memorandum:

1. The present Marriage Laws protect the interests of women. In order to give equal protection to men, they should be suitably amended.

2. Divorce should be immediately granted if a bride has incurable disease like cancer, tuberculosis, venereal disease, etc.

3. The period of separation for the purpose of granting divorce should be reduced from 3 years to 6 months or 1 year.

4. If a husband and wife do not live together for one year for any reason, divorce should be granted.

5. The provision of mayan, maintenance allowance should be dispensed with.

6. Hindu Marriage Law should be amended on the model of laws existing in America and of the pattern of Muslim Marriage Law.

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ORIGINAL IN HINDI
(Summary in English)

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 85.....

(Comments/suggestions received from Shri R.N. Mishra, Sonda)

1. There should be uniform law for all citizens of India irrespective of caste or community.

2. Hindus, like Muslims, should be allowed to have more than one wife. This will put a check on dowry and tyranny to women. Similarly, those who do not have a child should be permitted a second marriage with the condition that not more than two children will be produced.

3. Either party to the marriage should have a right to seek divorce they have temperamental incompatibility or suffer from venereal disease or have been living separately for two years. But it should be ensured that in divorce they do not have to take resort to court. Just as marriage, is performed according to the religious rites so also the divorce could be sought according to one's own religion when both the parties are agreeable. But those having children should not be allowed either divorce or a second marriage.

4. The minimum age of marriage should be increased. There should be a ban on Barat, dancing, fireworks, band etc. to check wasteful use of money.

5. Anti-dowry law should be made more stringent.

6. Till ten years after the marriage, the girls should have the same rights in their ancestral property as boys.

7. After the death of the husband, wife should become the heir to his property, not sons. Sons should inherit after mother's death.

8. Girls should get separate share in the ancestral property only when they are divorced, irrespective of whether 10 years have passed or not since their marriage, and they do not have any property, are not in service or do not have any sources of earning.

9. Arrangements should be made to provide employment to educated girls.

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प्रेषक :- आर० न०मिश्र, रानी बाजार, गोन्डा ।

सेवा में :- कानून मन्त्री, भारत सरकार, नई दिल्ली ।

विषय :- वैवाहिक विचार ।

महोदय :- आप का ध्यान आकर्षणार्थ के प्रचार की ओर दिलाते हुए भिन्न सुझाव आप के सेवा में विचारार्थ प्रेषित हैं ।

1. भारत वर्ष के सभी निवासियों के लिए एक समान ही कानून होना चाहिए, न कि हिन्दू, मुस्लिम, ईसाई या अन्य धर्म वालों के लिए अलग-अलग ।
2. हिन्दू धर्म को भी वही सुविधा मिलनी चाहिए जो मुस्लिम धर्म को है अर्थात् एक से अधिक विवाह की छूट । इससे दहेज प्रथा, वेश्यावृत्ति, युवतियों के ऊपर अत्याचार, युवतियों का घर से बाहर हो जाना आदि पर रोक लगेगा । साथ ही इसमें यह आवश्यक हो कि जिसके पास सन्तान नहीं है वह दूसरी शादी कर सकता है तथा दो से अधिक सन्तान पैदा नहीं करेगा । इससे जातिवाद पर भी रोक लगेगा ।
3. पति-पत्नी को बराबर वह अधिकार होना चाहिए कि :- यदि दोनों आपस में एक दूसरे के विचार से सहमत नहीं हैं, किसी बीमारी से (छूत की) ग्रसित हैं, चारित्रिक दोष है, दो सालों से अलग रहते हैं या और कोई ऐसी स्थिति है कि दोनों के जीवन में एकता नहीं है तो शादी के दो वर्ष बाद एक दूसरे को तलाक दे सकते हैं । इससे बाल विवाह, दहेज प्रथा, असमान उम्र का विवाह, एवं अन्य कुरीतियों पर रोक लगेगा । परन्तु तलाक में यह सुविधा भी नितान्त आवश्यक है कि तलाक हेतु किसी पक्ष को अदालत की शरण न लेनी पड़े बल्कि जिला

धर्म के अनुसार विवाह हुआ है उसी प्रकार तलाक भी हो जाए अर्थात् दोनों पक्ष अपने अनुसार तलाक दे दें । इससे, समय, धन एवं धर्म तथा मर्यादा को कोई आंच नहीं आएगा । यही सामाजिक दृष्टि से भी उचित है । इसके साथ यह बन्धन भी होना चाहिए कि यदि किसी के पास बच्चे हैं तो वह तलाक नहीं दे सकता है न ही दूसरी शादी कर सकता है । हिन्दू धर्म में कर्मकान्ड के लिए एक लड़का होना नितान्त आवश्यक माना जाता है ।

4. शादी की आयु सीमा बढ़ाया जाए । बारात, नाच, आतिशबाज़ी, बाजा आदि पर रोक लगाया जाए जिससे धन, समय का दुरूपयोग नहीं होगा तथा परिवार कल्याण को बल मिलेगा ।
5. दहेज विरोधी कानून और कठोर किया जाए ।
6. लड़कियों को अपने पैत्रिक सम्पत्ति में वही अधिकार शादी के दस वर्ष तक होना चाहिए जो लड़कों का होता है ।
7. पति की मृत्यु के पश्चात् पत्नी को समान सम्पत्ति का वारिस होना आवश्यक है न कि लड़कों को । लड़कों को वारिस मां की मृत्यु के पश्चात् होना चाहिए तथा यदि लड़का भी है और उसकी शादी को अभी दस वर्ष से कम हुए हैं तो वह भी इस सम्पत्ति की बराबर का भागीदार मानी जाए ।
8. लड़कियों को अपने पैत्रिक सम्पत्ति में उसी समय अपना भाग प्राप्त हो सकेगा जब वह तलाकशुदा हो । पति के पास उसके मृत्यु के पश्चात् कोई सम्पत्ति न रही हो, वह कोई नौकरी न करती हो तथा उसके पास कोई जीवनउपार्जन के साधन न हो । चाहे शादी के दस साल बीत गए हों या इससे कम ही हों ।

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9. शिक्षित लड़कियों को उनके शिक्षा के अनुसार नौकरी, या नौकरी भत्ता (यदि उन्हें नौकरी नहीं मिली है) दिया जाए ।

10. प्रत्येक परिवार में शिक्षित महिलाओं को उनके शिक्षा के अनुसार नौकरी दिया जाए जिसे करना अनिवार्य हो इससे बेकारी समाप्त होगी तथा महिलाएं प्रत्येक क्षेत्र में आगे आएंगी जो नितान्त आवश्यक है ।

आर० एन० मिश्रा
रानी बाजार,
गोन्डा

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 86

[Comments/suggestions received from Shri Bhogaraju Perraju, Chanakya Nagar, China Mushidivada Vill. & P.O., Via Pendurti.]

If a man asks divorce, court is to carry out through trial about all relevant factors of the case. If inescapable, then only divorce is to be approved to him duly sanctioning sufficient maintenance allowance to his wife.

2. Normally no lady requests for divorce since majority of ladies in India are completely dependent upon their husbands. So if a lady asks divorce in the morning, same day in the evening she must be granted divorce. Then only thousands of murders of helpless ladies in the hands of their cruel/selfish husbands and their relatives can be avoided.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU

MEMORANDUM NO. 87

ENGLISH SUMMARY

[Comments/suggestions received from Shri N.M. Naidu, Charma Sanaram, Via (Narasipatnam)_7

1. Statute may force a couple to stay together but not their hearts, and hence in the case of irretrievable breakdown it is better to grant divorce.

2. If parties to a marriage live separately for one year, that should be sufficient ground for divorce.

3. Children of such couples should be allowed to stay with one of the parents where they choose.

4. In the eyes of law, there is no difference between man and woman, but it is generally supposed that only a woman suffers on account of divorce which is not true. The problem of the male partner should also be taken into account.

ORIGINAL IN TELEGU

ENGLISH SUMMARY

MEMORANDUM NO. 88

[Comments/suggestions received from Shri A. Srirama Chandra Murthy, Thanelanka-Molli Mummadivaram Tq. East Godavari Distt. Andhra Pradesh.7

1. The period of separation should under no circumstances be reduced. On the other hand, it should be 3 years.

2. Regarding the children the petitioner says that if the child happens to be a boy, he should remain with the father for 20 years, if it is a girl, until her marriage the father should take care of her.

3. A person of loose character, a drunkard, a gambler should not be permitted to get a divorce.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU

ENGLISH SUMMARY

MEMORANDUM NO. 89

[Comments/suggestions received from Shri P. Prakash Rao, Village Tirupathi, Via Mallam, Tq. Peddapuram, Dt. East Godavari, A.P.]

1. Marriage are breaking down in most cases just because they happen to be arranged ones in which they have no say of their own.

2. A girl should have the right to marry the man she likes.

3. Dowry is also playing its own party in the breakdown of marriages.

4. Both husband and wife, should not be employed.

5. Regarding the children, 50% of the income of mother and 10% of the father should go to their welfare in the cases of divorce.

6. Society must prescribe that marital status of a man must also be indicated by wearing some ornament (like Mangalasutra for female).

7. The period of separation should be reduced to one month.

8. One must be allowed to divorce even by post. Marriage officers should be set up even at the village level.

9. Polygamy must be permitted.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU

MEMORANDUM NO. 90

SUMMARIES IN ENGLISH

[Comments/suggestions received from Shri V. Babu Rao, Kotha Kunkamu.]

1. Divorce can be granted if staying together becomes impossible.

2. In divorce cases the testimony of neighbours should be taken into account. Court should not rely on the arguments of the advocates alone.

3. If a person has an income of Rs.300/- or below, the Government should look after the welfare of the unfortunate woman.

MEMORANDUM NO. 91

[Comments/suggestions received from Shri M. Thomas, 95, Harijan Colony, Pattabiram, Madras.]

1. Divorce is a must when husband and wife cannot live together.

2. A divorce should not be permitted during youth.

MEMORANDUM NO. 92

[Comments/suggestions received from Shri Rewada Arjuna Rao, Poonam Tea Stall Kottewere Chodavaram, Vizag, A.P.]

1. Divorce is necessity in the present day set-up.

2. Separation period should be 3 months.

3. Minors should stay with their parents in case they are separated. Children who are major can decide their own fate but their financial burden must be borne by their father.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU
ENGLISH SUMMARY

MEMORANDUM NO. 93

Comments/suggestions received from Shri Jami Govinda Rajulu, Parlavari Veedhi, Srikakulam, A.P.7

1. If a woman's character is questionable, the divorce should be granted.

2. Insanity of wife should be a ground.

3. The separation period should be 5 years.

MEMORANDUM NO. 94

ORIGINAL IN TELEGU
ENGLISH SUMMARY

Comments/suggestions received from P. Roja Kumari C/o K. Devenamma, Regina Palem, Chilakaluripet, Guntur Dt. A.P.7

1. When a wife moves, the court for a divorce the court should immediately grant her wish. Otherwise she may commit suicide or may even kill her husband.

2. There need not be any period of separation or at the most 4 months will do.

3. Children should remain with their mother. Father should render financial assistance.

4. If dowry issue leads to the separation, the court should grant divorce on the application from the wife.

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(10) (197)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 95

ORIGINAL IN TELUGU
ENGLISH SUMMARY

[Comments/suggestions received from Smt. Ghanta Asafali, Ghanta Vari Bazar, Tenali, Guntur Dt._7

1. Before seeking divorce, the couple should have stayed separately for atleast 6 months.

2. If the parties have childre, it is better not to grant divorce otherwise children may turn out to be delinquent. In such cases where there is no other go except getting divorced, the major portion of the income of father must go to children and their mother.

3. It is better, if the children remain with their mother.

MEMORANDUM NO. 96

ORIGINAL IN TELUGU
SUMMARY IN ENGLISH

[Comments/suggestions received from Shri M. Venkateshwar Rao, Siripuram, Via Wyra, Tq.Madira, Dt. Khammam._7

1. The parties should have stayed separately for atleast three months for a divorce.

2. In case they have children, every care should be taken regarding their welfare.

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(11) (78)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU
ENGLISH SUMMARY

MEMORANDUM NO. 97

[Comments/suggestions received from Shri Mallipudi Sri Ramachandra Murthy, Bojjer vari thota Pithapuram-533450, Dt. East Godavari, A.P.]

1. Amendment to the present Hindu Marriage Act, 1955 is in conformity of the changing situation.

2. The parties who have sought divorce should have stayed at least 5 years separately. At that time a man should be at least 25 years of age and a woman 20 years.

3. If they have children, the divorce should not be granted until their children attain the age of 5 years.

4. If both the parties are educated separation period should be 2 years.

5. Court should take care of the children.

6. Village elders must have their say regarding the behaviour of parties. Their report regarding reconciliation efforts should be duly considered by the court.

ORIGINAL IN TELEGU
ENGLISH SUMMARY

MEMORANDUM NO. 98

[Comments/suggestions received from Shri K.L. Rao, C/o K. Srinivas Rao, H.C. 112 Taluka Police Station, Vizianagaram.]

1. Men and women should be treated equally in the proposed amendment.

2. The behaviour of the parties character must be given first consideration.

3. If a person re-marries without getting divorced, he should pay maintenance allowance to the former wife.

4. In the case of a child marriage, it can be dissolved when they ask for it at the time of their maturity.

5. Rich and poor should get an equal treatment in divorce cases.

6. Divorce is a social necessity.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELUGU
ENGLISH SUMMARY

MEMORANDUM NO. 99

[Comments/suggestions received from Shri E. Yathi Raja Valli, Antherwedi Palem-533252, Razole Taluq, Dt. East Godavari, A.P.]

1. The proposed amendment reflects the changing mood of the society.

2. Divorce can be given on the grounds of health, insanity, impotency or lack of fitness to become husband and wife. Courts should publicise such grounds properly so that in future he or she can not ruin the life or future spouse.

3. When the issue of dowry leads to divorce, such people who demand dowry should be fully exposed and published severely.

4. Men and women should be treated equally when the divorce comes before the court. There should not be much delay in granting divorce.

5. Before granting divorce, the concerned parties must be asked to stay apart at least for 2 years.

6. Those who are having children should not be granted divorce. If it is unavoidable, children and mother should get half of the income of husband. If the children do not opt to stay with mother, she should get 1/4 of the income of the husband.

7. Advocates, instead of pleading for the separation of couple, should plead for their unity.

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(13) (297)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU
SUMMARY IN ENGLISH

MEMORANDUM NO. 100

[Comments/suggestions received from Shri B. Anjamma C/o Koti Reddy, Panchayat Samithi, Maddipadu (Ongole Tq.), Prakasham Dt. A.P.:]

1. Girls who have become the victims of dowry, should choose to get divorce instead of succumbling to the pressures.

2. Where a husband is treated with contempt, constantly humiliated, he should be given divorce immediately. Procedures of court should not delay the matter.

3. Divorce should not be granted if the applicants have any children.

4. No separation period is necessary.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELEGU

ENGLISH SUMMARY

Memorandum No. 101.

[Comments/suggestions received from Shri B.G.V. Appala Narasiah, Kotha Baagam, Konisha P.C. Gajapathi Nagaram S.C. Vihian Nagaram.]

1. It both the parties are employed at the time of divorce, they must agree to share the responsibilities equally in respect of their children.

ORIGINAL IN TELEGU

ENGLISH SUMMARY

MEMORANDUM NO. 102

[Comments/suggestions received from Smt. K. Seetamma F/o Shri K. Kodanda Rao, I & P Deptt. Jagannadha Giri, Kakinada Tq. Via Praksharama East Godavari Dt.]

1. Courts and the Government should take necessary steps in the re-marriage of divorced wife.

2. Before granting divorce, the parties should have stayed separately for atleast 4 years.

3. Children should be taken care of when their parents decide to part company once for all.

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(15) (202)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 103 ORIGINAL IN TELEGU
ENGLISH SUMMARY

[Comments/suggestions received from Shri P. Venkatramulu Rajamundry.]

1. If wife refuses to stay with her husband, husband can be granted divorce.

2. After 10 years of marriage if any party seeks divorce, the divorce can be granted.

3. Children should remain with their mother.

ORIGINAL IN TELEGU
ENGLISH SUMMARY

MEMORANDUM NO. 104

[Comments/suggestions received from Dr. Sastry, Pharmocologist, Kotha Valasa Vijayanagaram.]

1. Women's lib movement has changed the minds of women.

2. The separation period should be of 3 years.

3. Children should remain with their mother.

4. Tradition must be given its due place in the proposed statute.

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CONFIDENTIAL (16)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

ORIGINAL IN TELUGU
ENGLISH SUMMARY

MEMORANDUM NO. 105

[Comments/suggestions received from Miss N. Chilakamma, Retd. Head Mistress, G.T. Road, Srikakulam (A.P.).]

1. The initial period of separation should be raised to 20 years. By doing so, there may be a possibility of reunion. Christian canons prescribe 20 years of separation period for a divorce. During these 20 years, the husband must pay half of his income to his spouse.

   If they (the couple who want to get divorced) have children the misery will be much more. Hence 75% of income of the husband should go to the wife and her children. Unless this is done, the Government should not permit such a person to re-marry.

2. Divorce should not be granted on frivolous grounds like mental disorders or insanity.

3. There are many cases at present, where a person remarries without getting divorced. In such cases in addition to the payment of half of his income, he must be given other punishments like imprisonment etc.

4. There are also several cases where a husband leaves his first spouse on the ground that she bore no children for him. Husband also is equally responsible as that of wife in this regard. Hence the sterility of a woman should not be allowed as a ground for the divorce.

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CONFIDENTIAL

ORIGINAL IN HINDI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 106

Memorandum received from Madan Sunita, Jakhal Hosp, Behraich.

1. Divorce through courts should not be considered a must. If both the partners agree for a divorce, they should be able to divorce each other without any legal proceeding.

2. If both the partners have been living separately for a year and if there is any doubt about the character of either of the two of if they are suffering from some incurable disease then they should have the right to remarry. Both the partners should have equal rights in this matter.

3. Marriages in Hindu Society are performed without any registration. So there is no need to go to courts for divorce. It is a wastage of time and money which leads to many social evils.

(3)

जरवल रोड,
जनपद, बहराइच,
पिन कोड- 271901

महोदय,

आकाशवाणी लखनऊ के विज्ञापन के अनुसार वैवाहिक सुझाव 31 जनवरी के तिथि को बढ़ा कर 15 मार्च, 1982 कर दिया गया है । उक्त से संबंधित निम्नलिखित सुझाव आपके विचारार्थ प्रेषित है ।

1. हिन्दू समाज पर जो बन्धन कानून में लगाए गए हैं वह मुस्लिम समाज से भिन्न हैं जिसके कारण जातिवाद को बढ़ावा मिलता है । जबकि भारत वर्ष के सभी निवासियों के लिए एक जैसा ही कानून होना चाहिए ।

2. हिन्दू समाज में एक से अधिक विवाह को कानून नहीं मानता है जब कि यह बन्धन मुस्लिम समाज के लिए नहीं है ऐसा नहीं होना चाहिए ।

3. हिन्दु समाज को भी वह छूट मिलनी चाहिए जो मुस्लिम समाज को मिली है ।

4. हिन्दु समाज के लिए यह नितान्त आवश्यक है कि यदि किसी के पास पहली औरत से कोई सन्तान नहीं है तो वह सन्तान हेतु दूसरी शादी कर सकता है जिससे हिन्दु परम्परा के अनुसार बन्सज चल सके एवं मृत्योपरान्त अपने लड़के द्वारा कपाल क्रिया का कर्मकांड प्राप्त कर सके ।

5. यह आवश्यक न माना जाए कि तलाक संबंधी कार्य कोर्ट से ही निपटाये जाए इसमें यह छूट होना चाहिए कि यदि पति-पत्नी आपस में रजामन्द हैं और अपने पर यह चाहते हैं, तो वह एक दूसरे को तलाक दे सकते हैं । जो आपस में लिखा पढ़ी करके कर लें ।

6. यदि पति पत्नी एक वर्ष से एक दूसरे के साथ नहीं रह रहे हैं, एक दूसरे से संबंध नहीं रखते हैं, किसी का भी चरित्र संदिग्ध है, या कोई ऐसी बीमारी, अवगुण, जो छूत की बीमारी मानी जाती है, दोनों को छूट होनी चाहिए कि वह अपनी दूसरी शादी कर सकते हैं तथा अपना जीवन साथी चुनने का पूरा अधिकार है। पति पत्नी दोनों को बराबर अधिकार होना चाहिए।

7. अधिकतर हिन्दू समाज में बिना लिखा पढ़ी के ही शादी होती है फिर यह कहां का न्याय है कि तलाक हेतु कोर्ट में जाएं। इससे समय, धन का दुरूपयोग होता है तथा समाज में भी बुराइयां होती हैं।

उपरोक्त को ध्यान में रखते हुए हिन्दू विवाह कानून में संशोधन किया जाए।

सुनीता
जरवल रोड
बहराइच, 271901

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 107

Memorandum received from Smt. Swarnalatha, D/O Shri D. Sudarsan Rao, Sunkara Street, Vizianagram-531202.

Whatever may be the circumstances, no divorce is to be granted to those who are having children unless both the parties agree.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 108

[Comments/suggestions received from Shri Ram Lal, A-108, Laxmi-bai Nagar, New Delhi. 7

In the proposed Bill, (i.e. The Marriage Laws (Amendment) Bill, 1981) it is proposed to insert in the Acts as under:-

"DIVORCE ON THE GROUND OF IRRETRIEVABLE BREAK DOWN OF MARRIAGE."

Now question arises why irretrievable break-down takes place? There are so many grounds that exist in the present society, but it is not feasible to list all the grounds. However it is true that relation between wife and husband depends only on love and understanding, but existing Laws are not competent to punish the guilty person, when petition is made on the ground of Adultry. Only Indian films, depict the adultry but for common person it is not at all possible. Nevertheless either he or she wants to punish the other who commits adultry. How he or she can be punished when law is not in favour of the petitioner? But the person has a weapon for the punishment and that is 'Hate'. When once hate overpowers a person on the ground of adultry between wife and husband it can never be eradicated if petitioner is self respecting, he will tolerat all the odds in the world except adultry.

In case irretrievable break-down occurs, what will be the solution of this problem? When both are living separately and one of them wants to get divorce but petitioner fails to get it due to lack of evidence and inspite of loosing the case he/she is not ready to live together, than such marriage becomes a useless burden. It means both the parties suffer, although one is guilty and the other is not. In this situation existing Law is responsible for the suffering of both the parties. If Divorce is granted it would mean one of them will be free from tension. It means law helps reducing tensions from the society.

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Besides this, there are other grounds also in the existing law for getting the Divorce decree but these are useless and husband cannot take shelter of these grounds, although husband fights throughout the life, he can not succeed in getting the Divorce Decree.

In the proposed law provision has been made with certain safeguards to eliminate financial hardship to wife and children till wife's remarriage and children born of wedlock come of age. A wife of morally corrupt or a patient of some venereal disease should not have any moral right to get financial safeguards from husband when wife is habitual of leading lustful life and got her married after hiding her character and other disabilities but in absence of any proof of adultry in the Court, husband should not hesitate to give financial help to wife and children. In case husband is ready to render financial help to the wife and children, decree of Divorce must be granted to the husband.

Best way to provide safeguards to wife and children is permanent alimony. In fixing the permanent alimony, Court should take Bond from the wife that she is not going for re-marriage or if she goes then after how much period of time she can do so. Permanent alimony may be fixed after considering the time of living alone in the above reply from the wife in the shape of Bond, so that it may not become business of the lustful ladies for getting permanent alimony from the husband with whom they always got married.

Period of three years is more than sufficient to know whether marriage was brokdown irretrievable or not or watching the posibility of restoration of relation between wife and husband. However three years may be considered minimum time in such type of cases where parties live together for not more than two years but span of time may be extended in such type of cases where parties live together for more than two years mean one year may be added with the actual period of residing for getting the result of breakdown of marriages. Moreover I do not justify the extension of the span of time for more than 10 years in any case.

We cannot decide any problem successfully unless we study deeply all the prons & cons of the problem. After analysing so many cases of matrimonial problem, I have judged the problem on the following lines.

1. Why divorce cases are increasing in the present society?

A. Educated ladies are mistaken about the definition

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of Modern Society means they are staunch supporters of the movement of woman lib. "They are crazy after sex-freedom and would not hesitate to destroy the ill-born child". On the other hand when she enjoys with her husband, her desire becomes to get baby from her husband and she throws the responsibilities of baby on her husband. If deeply thought, it has been found that status of husband in the ideology of such type of woman is not more than child producing machine or her slave. Such type of woman has no love and affection for her husband. She has only married for getting child and have a stamp of marriage. Do you think such type of woman on the name of women liberation going on the right path?

B. What is the difference of sex of woman before and after Marriage.

Before marriage she gives complete sex satisfaction to her paramour and left no responsibility (growing child) for him. Paramour gets enjoyment without responsibility even with married woman. After marriage she fails to satisfy her husband and fix responsibility (of children) on his head.

C. In view of the 'A' above how many lustful ladies for instance are prepared to hold their baby (born through other than husband) and own it in face of protest and jeering by society?

D. Among the divorce cases, most of them relate to working lady because law and society permits her only to sell her labour but she wants to get freedom to sell her sex also. And according to my view such type of lady has only right to please her clients, she should have no right to hold the title of 'wife' of any gentleman.

E. Abortion without considering whether lady is married or un-married is legal. Main aim of holding Medically Termination of Preganency legal was to control the population and reduce the number of illegitimate children, but now misuse of this law is poisoning the society. Woman are enjoying sex before marriage without hesitation and after hiding their character get themselves married, but when husband discover her without virginity and does not get sex satisfaction from her then he deserts such type of wife and battles for divorce start in the court. Worse affect of the whole affairs have to be borne by the children of such type of lady. Woman is getting complete sex satisfaction in this way but husband is not because he cannot easly divorce corrupt wife and get himself re-married for getting faithful wife for his sexual satisfaction.

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Therefore it cannot be improper if divorce will be made easy for the man's sexual satisfaction because man cannot get complete satisfaction from lady in absence of virgin.

2. Natural Desire.

A. Sex is basic desire of all the living creatures on this land, but generally when any man gets wife of loose morals he is pressed by the society and law to accept that lustful lady. Should he follow the dictates of such people who gets sex satisfactions? Certainly not in my view.

B. Every necessary compelling circumstances make affected man dissident of today but they will become conformist tommorow.

C. For healthy family life healthy sex relations are necessary.

D. After discovering that her husband is impotent, can any newly married woman accept him as her husband? So why should not man refuse to accept lady have no virginity.

E. One gets wife of loose morals, which create mental and sexual dissatisfaction, to remove it if he goes for another marriage, than it becomes injustice for second wife because she is getting used husband, other way to get it also crime. Then how he can get his share/satisfaction without doing injustice to the woman community?

3. Importance of Marriage

A. Affection - Service - respect - dedication

B. Love - Sex - Child

C. After performing relicious ceremony do boy and girl become wife and husband or after both accept/ recognise each other as wife and husband by mind, heart and brain.

4. Tention due to this problem

A. If some one suffers from synlisis after co-habiting with his newly lustful wife, then Law will say that you might be haves sex relation with other woman.

B. If some one died after chest pain or become a mad due to this problem then Law cannot give punishment to pain creator because law cannot care for emotions but family cannot function without emotion or affection.

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5. Difference between wife and prostitute

A. Every prosititute keeps baby but no prostitute gets the affection of the father of the child. Child has to suffer from love and affection of his father without his own fault.

6. General

A. Some time man requires divorce only because he can not see image of his family spoiled by the lustful lady.

B. After getting good wife or husband man can serve the society in a better way.

C. Original thinkers are always branded as rebels.

D. It is very difficult to achieve the success in life in absence of life partner.

7. All the cases cannot be listed in dowry demand cases.

8. Morality

A. Man should not hesitate to accept these types of women:-

(i) Rape victim:- Who has tried to get punishment for the Rapist from the Court of Law.

(ii) Widow: Who's husband died in any other way except any complaint from his wife.

above (i) and (ii) are subject to comparison of natural gifts and man made achievements.

9. Solution

A. Free sex is proceeding towards the destruction of society. If woman caught red handed in indulging in sex with any man other than her husband should be sterlised. Lustful lady should not be given right to become mother.

B. Lustful lady should be dismissed from Government services/Private services.

C. Abortion should be made legal only for married woman.

D. Divorce Decree should be granted easily.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 109

[Comments/suggestions received from Smt. K. Sowjanyavathi, Kakinada, Karnataka._7

1. The case should be tried at the place where the lady is living. This saves time and money and somebody escorting the lady to the place where the case is tried

2. This should be tried by women juries to whom we can narrate our difficulties freely, preferably in camera.

3. What we say on sworn affidavit should be accepted without asking for corraboratory evidence as proofs cannot be produced for what has happened in the bed room. Naturally those who are present around are his people who will not speak for me.

4. The case should be disposed off after verifying the antecidents of the lady and her family by a responsible person without asking for corroboratory evidence.

5. The onus of proof should rest with the husband.

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(12) (214)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 110

[Comments/suggestions received from Pune Mahila Mandal, 17 Parvati Marg, Pune-9.]

Introductory -

The Legal Committee of the Pune Mahila Mandal, Branch - All India Women's Conference, organised a meeting on 13.3.82 at Mrs. Yamutai Bhagwat's residence to discuss the propose insertion of new section 13 (C), (D) and (E) to the Hindu Marriage Act 1955 and to the special Marriage Act, 1954. Representatives of all major women's organisations in Pune attended. Some lawyers and retired judges were also present.

The proposed amendment was discussed in its legal and social aspects and rejected. Our reasons are set out in detail after this. Basically for us marriage is a voluntary contractual arrangement between consenting adults. Co-habiting and bringing up children are the two major aspects of the marital agreement.

If; for any reason, one or the other aspect comes in danger of not being materialised, we believe that both spouses have jointly or severally the right to enter a petition for divorce i.e. termination of the contractual arrangement.

However, divorce is not a crime. It is a reviewing of an earlier judgement by two people about their ability to get on together. Divorce if wanted by mutual consent should be granted with minimum fuss. The provision of mutual consent divorce is adequate and it may be extended to cover all marriages.

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However, when only one spouse wants to discontinue, care must be taken to avoid injustice to the other spouse and to the children. It must be agreed upon as a principle that economic obligations of the earning spouse/s do not cease with the dissolution of marriage. We oppose the insertion of section 13(C) with all its subclauses i.e. 13(C) (1), (2), (3), (4) and (5) to amend the Hindu Marriage Act, 1955 and 28A (1), (2), (3), (4) and (5) the Special Marriage Act, 1954.

Our reasons are as follows:

(1) Irretrievable is a very vague term to be so considered only when one spouse claimes divorce and the other is willing to continue the marriage, the grounds must be specifically defend in the interest of fair treatment of both spouses.

(2) Three years separation can be achieved very simply in Indian Social conditions by the man. He can neglect to shift his residence after being transferred, or in an urban set up, he may genuinely be unable to find accommodation. Or for the purpose of educating the children or caring for the elderly parents, he may leave his wife away from him. Thus while she is unaware of his intentions he may be establishing a separate residence. Particularly so in view of the proposed 13 (C)(4) which unables him to visit his wife for brief periods. In fact under these provisions in an extreme case, a man can get his wife pregnant and then leave her.

(3) If on the other hand, it is the wife who is seeking a divorce it is well-nigh impossible for a woman to find a safe shelter for 3 years where her husband may not come to bother her and violate the 3 years separation period. Only a woman with independent economic means and a priviledged social background can find it convenient to live alone safely these days. It is a known social fact which seems to have escaped the attention of the legal minds drafting this clause. The proposed provisions are unfair to

months limit as operative now under the 'mutual consent divorce' is eminently reasonable. We propose

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that 'mutual consent divorces' be obtainable in 'All Marriages' regardless of religion, casts, creed, etc. This will be an important first step towards a common Civil Code.

(3) When divorce is sought by one spouse and contested by the other marriage counselling may be made mandatory. Such counselling body must have both men and women on it. Wherever such services are not available, the government should take steps to encourage formation of such voluntary bodies.

(4) All grounds should be specifically listed. The present list may be extended to include incompatibility of temperament.

(5) There must be an absolute time limit to settle such cases one way or the other. We propose that from the date of application, the decision must not be later than two calender years.

Inordinate delays only cause hardship to children, other dependence and to the wronged spouse. Rehabilitation also becomes more difficult as delay increases age and causes frustration.

(6) We must realise that divorce is not a crime. Instead, it is a correction of the previous judgement that the two parties of a marriage contract will get along harmoniously. For the purpose of law, all marriages are assumed to be performed in all sincerity of intentions. Therefore, the desire to review the working of a marriage should also be sincere. Hence, not a crime.

(7) All the marriage disputes should be conducted before specially appointed tribunals instead of before regular law Courts.

(8) All marriages disputes may be conducted in camera to protect the dignity of concerned individuals.

(9) Assessors must be present at each trial to see whether a fair representation on behalf of the traditionally maltreated party i.e. the wife. These assessors may be chosen from an approved list of public minded men, women locally known to be involved in the social work along with their professional responsibilities.

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(10) The custody of the children also should be given on specific consideration. Under Indian Social conditions, a single parent who has the custody faces many difficulties. For instance, children are not admissible in working women's hostels. Also re-marriage is easier if a woman is without the burden of looking after her children. This is sad but true. Therefore the court must have the right to award the custody to the paternal or maternal grand parents and give visiting rights to both parents. Maintainance allowance for them may be collected from the earning spouse,

(11) The issue of custody and legal guardianship needs to be re-examined. Children must not made innocent victims of marital dischord and economic wrangling subsequent to it.

(12) Let us now turn to 13(D) and (E). Our previous comments deal with it partially. But specifically we wish to point out that the non-earning wife finds it very hard to travel back and forth for the hearings. Therefore, all divorce hearings be conducted in the nearest tribunal to the residence of the woman. This can be changed to any other location throughout the country if a petition to that effect is signed and submitted jointly by the spouses.

(13) For children over five years, in awarding custody, the wish of the child also be ascertained through the expert services of counsellers. In no case the child should be handed over unwillingly to anyone. If the child has no marked preferance then only the dicision be left to the court subject to the well-defined grounds.

(14) Children under five years should not be separated from their mother unless she is in extreme poverty or has a dangerous communicable disease or is insane.

(15) Section 13(D) (1) is very vaguely formed. It almost encourages litigation and provides scope for the contesting skill of the lawyers and the idiosyncrasies of the judge. Although marriage is a contract, its human angle must never be lost sight of. It is not on par with a business contract. The formation of 13(D) ignores this fact. It has been based on vague terms like 'hardship' giving a lot of free reign to legal hair splitting.

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(16) About section 13(E), we have already said something earlier, but on grounds of equality of men and women we submit that 13 (E) (b) be removed. Unmarried or widowed women if they are over 18 years are not to be treated as dependent children. This only encourages the secondary status of woman.

In short, We reject 13(C), (I), (2), (3), (4), (5).

We claim reformulation of 13 (d) and to think of hardship even of the place of litigation. We reject 13 (E) (b). But we appreciate the concern for the welfare of children. We demand -

Separate marriage dispute tribunals and assessors to deal with divorce petitions and custody petitions on a speedy basis.

We further demand -

that maintainance arrangements be tightened up. If maintainance is decreed and not paid within three months, the salary or other income should be directly attached and paid through the legal authorities to the beneficiaries (spouse and dependent and children). At present defaulters escape punishment. Permanent lump sum settlements in lieu or monthly payments should be preferred wherever possible.

CONFIDENTIAL (24) (218-A)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

SUPPLEMENT TO . . .
MEMORANDUM NO. 110

[Comments/suggestions received from the Legal Aid Committee, Pune Mahila Mandal, Pune.]

Family Courts

1) Family Courts:

The Law Ministry, Government of India has to be congratulated for taking up the question of establishing family courts throughout the country.

2. Access to Court:

We strongly feel that every citizen, irrespective of his/her religious beliefs should have access to such family courts.

3. Jurisdiction of the Court:

All domestic disputes and/or difficulties within the family should be a matter of concern for these courts. At present there is no uniform law for these matters. Therefore the court should be empowered to exercise the powers under all existing laws pertaining to marital and family matters. In particular, divorce, judicial separation, adoption, custody and guardianship of children, maintenance of admissible dependents (including mentally or physically retarded grown up members in the family). The laws governing these matters at present are different for different religious communities, i.e. The Hindu Marriage Act, The Parsi Matrimonial Act, Muslim Shariat Act, Laws Governing Catholics, Protestents etc. Also there is the Special Marriage Act.

The Family Court should be empowered to exercise the powers under all these laws.

However, we do strongly favour the enactment of a uniform civil code for all citizens in the not too distant future.

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4. Constitution of the Courts:

In the first instance, the courts should be established at the district level. However, to make it accessible and inexpensive for the common citizen, mobile sittings at the taluka level should be considered seriously. The Judge in the family court should, in our view, be assisted by not less than three assessors. These should preferably be drawn from a list of public spirited progressive men and women from various fields. Prominent women's organisations doing social and counselling work should be consulted in drawing up these lists at the local levels.

5. Assessors:

Citizen's participation in aid of reconciliation or in assisting the judge in coming to a decision is vital in family disputes. After all, disharmony in family life is detrimental to future citizens i.e. the children. It also affects the efficiency and quality of performance of involved persons in their work-life. In some cases it leads to alcoholism. Therefore, extreme family discontent is not a mere personal issue. It is a social matter often having causes in social traditions. Thus enlightened assessors can play a vital role towards equality and fair treatment of women in families.

6. Atmosphere of the Court:

Quite often here, the wife and the children are already handicapped for social reasons. A constantly beaten wife also hesitates to seek redress for want of social support and an active tradition accepting male dominance. The regular halls of justice have also been aloof and awe-imposing in the past.

To counteract this hidden negative pressure, the new family courts must take special care to be accessible and informal. Family disputes are not crimes. They are basically problems of maladjustment and there is nothing wrong in asking for justice in such matters. Wide publicity of services available should therefore be given. Proceedings should be conducted in a language well-known to disputants and assessors. It should not turn into a duel of skill between contesting advocates. One must never lose sight of the fact that alleviation of suffering injustice is the main aim of such courts. Human problems need human solutions.

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The above is in great contrast to prevailing state of affairs in matrimonial disputes at present. Therefore if possible some reorientation and training in attitude may be made available to lawyers, interested in such cases.

7. Jurisdiction to investigate the issues:

The judges appointed to these courts should be specially empowered to investigate into the causes of disruption or discontent which led to the dispute. For this purpose, the presiding officer may summon witnesses likely to be acquainted with relevant circumstances. This may include relatives, neighbours and family friends. However, the power should be exercised by the court, only after recording the reasons for exercising this power. The right of privacy and personal life should be respected as far as possible. In-camera proceedings are thus desirable.

8. Financing:

The establishment of family courts is essentially for stabilizing and enhancing healthy traditions of family life. Relief is to be provided by resolving domestic disputes between intimate members of the family. Therefore, very nominal court fees may be charged. The courts may however be invested with powers to apportion costs between the disputants. If a party is found to be guilty of deliberate infraction of duty to provide maintenance and expenses, there should be provision for collecting the entire costs from such party.

9. Implementation of Orders:

The court should have extensive powers for execution of its orders and decrees in an expeditious manner. Powers similar to the revenue officials for realising land arrears/revenue with speed may be invested in presiding officers of these courts.

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Or alternatively the execution of orders and decrees may be left to revenue officials or magistrates.

In all awards of maintenance there should be a clause for periodic revision of the amount according to change in circumstances.

If both parties are willing, lump-sum outright settlements may also be considered. For, in our experience at present the cumbersome nature of collecting the due amount leads to no payment in several cases.

10. Relief to Parties:

Judicial separation may be ordered for a limited period (preferably not exceeding one year at any given instance) in suitable cases. There need not be a plea for separation from the disputants. During the period of such a provisional separation expert counselling help may be recommended. Eventually our aim must be to extend counselling help to all those who need it. Women's organisations can play a leading role in this area.

Assessors of the original hearings can also take active interest in recommending counselling agencies and/or inidividuals.

The government may consider subsidized counselling in deserving cases, just as at present legal aid and family planning aid is subsidized to a large extent.

11. Periodical Review:

The Court should be invested with the power of reviewing the circumstances in which an order or a decree is given in respect of family dispute. This can be either on its own motion or the application of a party. In the changed circumstance the court may grant suitable financial relief on its own motion if the matter is brought to its notice.

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12. Relief against intolerable conditions:

Quite often in our society, a deliberate attempt is made to intimidate and harass newly married female members in a family in the secure belief that no outside agency will interfere. This is often the case with orphan children in a joint family also. It is high time that the sovereign power of the State should come to the rescue of such victims. Total negligence of mentally or physically handicapped members in a family is another area of cruelty in the families. If a complaint is filed by a responsible agency, the court should take cognizance of such matters without waiting for an application from the victim. The existance of such a remedy may prove a deterrent to unscrupulous husbands, mothers-in-law etc.

In view of the increasing reports of dowry deaths in the Press, such preventive measures are very necessary. The conscience of the public is already aroused in such matters.

13. Duration of Proceedings:

Justice delayed is justice denied. Normally after filling of the plaint or petition not more than 4 to 5 hearings should be necessary for arriving at a decision. Any effort to prolong the proceedings at the instance of the presiding officer or by either of the disputants should be discouraged. If possible a maximum time-limit of six months since the date of the plaint or petition may be fixed for giving the decision. Even today a mutual consent divorce is available after six months. Contending partners should also get relief in a reasonable time to prevent vindictive delay.

Responsibility for adjournment of hearings if any should be cast on the presiding officer.

If the party or its legal adviser cannot be present at all during the six months period, this will be a definite relief to spouses seeking a divorce from absconding spouses or from those who live abroad and contract unlawful alliances there while continuing to have a wife at home to look after the parents.

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14. Finality of Decision:

Domestic disputes once decided should be subject to as few challenges as possible. If able and experienced people of known progressive views are appointed to these courts, very few decisions will merit interference at a higher level later. However some provisions for not more than one appeal must be made on certain well-defined grounds. However, pending decision of the appeal, no stay on execution of order may be permitted, especially in maintenance decrees.

15. Women's organisations in the area should be consulted from time to time and their opinions be given due consideration.

16. We have no doubt that enactment of laws alone will be of little help. The sucess of the working of the family courts will depend upon the co-operation between the members of the Bench, the Bar, the Assessors, the parties to the suit, the society in general and last but not the least, a will on the part of all concerned, to try to come to a satisfactory conclusion. Once we admit that the family is the base of the society, and the nation, everything possible should be done to maintain a well-contented family.

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ORIGINAL IN MARATHI
SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 111

[Comments/suggestions received from Shri G.P. Salgare, Osmanabad, (Maharashtra).]

1. The implementation of Marriage Laws becomes difficult in the absence of required number of courts and due to interference of politicians, avarice of the lawyers to earn more money and dominance of social conventions. Effective steps should be taken to eliminate these impediments through this Bill.

2. The grounds on which divorce can be sought may result in injustice to men. The period of separation for the purpose of granting divorce should be reduced.

3. As there are thousands of cases of divorce pending before several courts in the country, special courts should be set up to dispose of these cases without delay.

4. The present Marriage Laws protect interests of women. In order to give equal protection to men they should be suitably amended.

5. Polygamy is allowed in Muslim community. It should be allowed for Hindus also. Marriage Laws should be uniform for all the communities in the country.

6. Dowry system should be abolished by law and stringent action should be taken against the parents who encourage it.

7. Inter caste marriages should be encouraged by giving special concessions to persons who go in for it. Legislative bodies should provide some reserved seats for persons who opt for inter-caste marriage.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 112

[Comments/suggestions received from Ministry of Social Welfare, Government of India.]

The Ministry of Social Welfare agrees with the proposal to include additional ground of 'irretrievable breakdown of marriage' in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, on the conditions as proposed in the "The Marriage Laws (Amendment) Bill, 1981". Accordingly, this Ministry supports "The Marriage Laws (Amendment) Bill, 1981, as introduced by the Ministry of Law.

This issues with the approval of the Minister of State for Education and Social Welfare.

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SUMMARY IN ENGLISH

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 113

Comments/suggestions received from Shri Moti Lal Sharma and others, Sikar.

According to Hindu Marriage Act, 1955, a couple can apply for divorce after living separately for two years. This desertion period gives birth to many sexual crimes therefore this period should be reduced to six months only. So that after a legal divorce is obtained they can remarry if they like.

The Court also takes a long time in granting a decree of divorce. Sometimes the court instead of granting a decree for divorce gives a decree for two years separation which means a couple has to wait for another two years. In this way five years are wasted unnecessarily.

According to Hindu Marriage Act, 1955, a wife is entitled for maintenance allowance from her husband. This Act was made in 1955 but now-a-days women are educated and are employed as well. Therefore maintenance allowance should be provided only to uneducated and unemployed women.

Now-a-days the number of applications for divorce has increased immensely, therefore, it is necessary to amend this Act.

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दहेज प्रतिषेध अधिनियम 1961 के कार्यकरण की जांच संबंधी दोनों सभाओं की संयुक्त समिति ।

श्रीमान विधि मंत्री महोदय की सेवा में,
विषय: अपराध जनक कानून

संदर्भ: श्री राष्ट्रपति जी का पत्र 4664-पी-1848/10

सादर निवेदन है कि दि॰30॰6॰80 हिन्दू विवाह अधिनियम 1955 की धारा 13(1)(iii) के अन्तर्गत ऐसा कानून बनाया हुआ है कि एक पक्षकार दूसरे पक्षकार का दो वर्ष से लगातार अभित्यजन प्रदर्शित करने के बाद में ही उससे विवाह विच्छेद की अर्जी दे सकता है । यह जो अभित्यजन का समय 2 वर्ष का है वह निश्चित रूप से अनेक यौन अपराधों को जन्म देता है । इसलिए यह 2 वर्ष का समय केवल 6 महीने में रखा जाना उचित है जिससे युक्त युक्ती यौन अपराधों की तरफ न जाकर सामाजिक नियमानुसार विवाह विच्छेद लेकर आसानी से पुनर्विवाह प्राप्त कर सकें ।

इस के बाद व्यावहारिक रूप में न्यायालय विविध विवाह विच्छेद में देरी करता रहता है । यह एक तरफ तो युक्त-युक्ती दो वर्ष से पहले ही एक दूसरे से अलग है उसके बाद न्यायालय इस तरह का देरी लगाये जाते रहने का व्यवहार करना युक्त युक्तियों के लिए मानसिक व्याधियों का भंडार है । कई मामलों में तो न्यायालय विवाह विच्छेद डिग्री देने के बजाय पहले पृथक्करण की डिग्री दे देता है जिससे युक्त युक्ती और दो वर्षों तक न विवाह कर सकते है और न कुवारों की तरह जीवन यापन करते है । इस तरह के कानून से कुल मिलाकर करीब 5 वर्ष का समय यौन अपराधों के लिए खुला हुआ होता है और इसी गन्दे समय को कम करवाना इस पत्र का उद्देश्य है ।

(2) इसी अधिनियम के अन्तर्गत पत्नी पति से पोषण हेतु कुछ रकम ले सकती है परन्तु यह नियम 1955 का (पुराने जमाने का) बना हुआ है जिस समय सामान्य भारत की नारी को अबला समझा जाता था परन्तु आज के जमाने में यूं युवतियां बड़े प्रतिशत में पढ़ी लिखी है और उनमें से नौकरी करने में सक्षम है । वर्तमान में अनेक ऐसे क्षेत्र है जहां युवतियां युवकों से आगे हैं । ऐसे हालात में हरेक नारी को अबला मानकर भरण पोषण की राशि दिलाई जाने के लिए पति पक्षकार को मजबूर हो करना नितान्त अनुचित है । वर्तमान समय को देखते हुए इस में सुधार करके केवल अबला और अनपढ़ औरतों तक ही इस नियम का उपयोग किया जाना चाहिए जाने हर एक औरत के लिए नहीं ।

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§3§ अगर आप वर्तमान को सही तौर से देखना चाहे तो न्यायालयों में आई हुई विवाह विच्छेद हेतु आई हुई अर्जियों की संख्या यह बताती है कि यह सन् 1955 के अनुपात में 20गुनी ज्यादा है उदाहरण के लिए अकेले चंडीगढ़ में वर्ष 1981 में 125 विवाह विच्छेद की अर्जियां आयी और दिल्ली में इससे भी ज्यादा संख्या में अर्जियां आई हैं। इससे स्पष्ट अन्दाजा लग सकता है कि पूरे देशभर में, कितने अनमेल विवाहों से युक्त युक्तियों परेशान होकर विवाह विच्छेद चाह रहे हैं। निश्चित ही यह पुराना नियम वर्तमान में संशोधनीय है।

प्रार्थी

मोहन लाल शर्मा,
अध्यापक,
शीतला का बास, सीकर 332001

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 114

[Comments/suggestions received from Government of Tamil Nadu (Home Department), Madras.]

Our unique Indian culture in regard to family life deserves preservation, despite changing socio-conditions. The existing grounds for divorce can take care of the intention behind the proposed new ground also. The proposed new ground will result as an inducing factor for breakdown of holy marital life, even for petty misunderstandings, that have to be got rid of by persuation, conciliation and realisation in due course.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 115

[Comments/suggestions received from Mrs. Hena Pal, Vice President, C.F. Women's Welfare Association (Mathar Sangam), Aruvankadu-643202.]

1. In my opinion, it is better that divorce/dissolution of marriage cases need not be discussed in open Civil Courts where many ladies, especially rural women, would not like to bring out clearly their private family matters in public. Hence I feel that marriage tribunals, (like labour court, industrial tribunals for industrial workers or Motor Accidents Claims Tribunals for accident cases) may be set up and deal with such cases in camera. Such a Tribunal can have a single Judge and Juries, at least 50% of them should be women from psychologists, philonthrophists, sociologists and experts on women and child welfare. These Tribunals can have Legal Aid Committee for poor women.

2. In divorce cases, children born out of such husband and wife are very vital witnesses, as such innocent children who would like to have continuously both father and mother can mould the entire situation for unity by their affection and love to both of them. With such conciliation machinery, even hard core irretrievable broken marriages can be settled and the courts can take pride of such results.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 116

(Comments/suggestions received from Shri K.Chandru Advocate, High Court, Madras, Member, Executive Council, Madras High Court Advocates' Association).

Marriage under textual Hindu law was primarily and essentially a sacrament. It was regarded not only as a union of two bodies but also of the souls in them. The textual Hindu law did not permit dissolution of marriage. The Hindu Marriage act created apropos marriage a relation and status, not defined by contract but by law. It has provided for legal dissolution of marriage (see Rajaram v. Deepabai AIR 1974 M.P. 52).

So long as such a divorce has not been obtained by one of the two parties on presentation of a petition from a competent Court the marriage subsists and a second marriage cannot be contracted. (See Ishwar Singh v. Hukam Kaur, AIR 1965 All. 464 F.B.).

Our Matrimonial law is based on the doctrine of matrimonial offence. Divorce is for a real matrimonial wrong. Culpability is a ground of divorce. It cannot just be granted for the trivial ups and downs of married life. It cannot be granted even where the Court is satisfied that the marriage has completely broken down or broken up, whichever way one may put it. The Hindu Marriage Act has itroduced the principle that a broken marriage can be treated like any other civil wrong; prove the wrong done to you and the law will grant its remedy. Here the finding is that the husband is in desertion. He cannot therefore take advantage of his own wrong. Law cannot come to his help. This is a broken marriage. There is no reasonable prospect of a reconciliation. But in law no remedy can be given to the husband. We have to apportion the 'fault' or the 'guilt'. (See AIR 1976 Delhi 141 - Mohinder Pal Singh, Appellant v. Smt. Kulwant Kaur, Respondent)

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Divorce, under the Act, as at present reflects in the main three categories of grounds. The first is the traditional theory of matrimonial fault (basing divorce on matrimonial offence, giving the right to the innocent party to apply for relief and vesting discretion in the Court to grant relief). The second is the theory of frustration by reason of specified circumstances. The third is the theory of consent. There is however, no theory of the breakdown of the marriage except to a limited extent. (See Law Commission, 71st Report).

As it can be seen the Law requires proving of the matrimonial guilt. It makes a party to make allegations against the other. Many times it brings lot of unpleasantness. Further the Court also requires a high standard of proof in such circumstances. For example, dealing with "cruelty" which is one of the grounds for divorce, the Suprement Court observed as follows:

> "Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws." (See AIR 1975 SUPREME COURT 1543 - Dr.N.G. Dastane, Appellant v. Mrs. S. Dastane, Respondent).

However, the Hindu Marriage Act has undergone a vast change and by virtue of the amendment of 1964 and by introducing Sec. 13 (1-A) the law has been widened to a considerable extent. In fact even before the present bill which introduces "irretrievable breakdown of marriage" as another ground section 13 (1-A) had already brought a similar position though in an indirect form. Dealing with this a Full Bench of the Punjab and Haryana Court in its decision reported in AIR 1977 P & H Bimla Devi v. Singh Raj observed as follows:

> "Prior to 1964, it was necessary for the party seeking a divorce to prove that his or her spouse had committed one or other of the matrimonial

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wrongs specified in S.13 or had come to suffer one or other of the disabilities specified in S.13. Clauses (viii) and (ix) furnished two grounds for divorce which were based on matrimonial wrongs"

> "The legislative policy is clear. It is to make divorce liberal and easy for parties whose marriage have broken down irretrievably as evidenced by the fact that there has been no resumption of cohabitation or restitution of conjugal rights within the prescribed period. 'It is to provide the basis for dissolving dead marriage with the minimum of rancour and hostility and the maximum of humanity."

However, many high courts at times have faced with the situation where even though they wanted to grant divorce due to the inadequacy of the legislation they could not do so. In parihar-vs-Parihar (AIR 1978 Rajasthan P.140) the High Court of Rajasthan observed as follows:-

> "It appears therefore that a marriage in which the parties could no more live together deserved to be dissolved. But there is no provision in the Act, that a marriage which has broken down irretrievably should be dissolved. Even in England this was introduced by the Matrimonial Causes Act, 1973, but the courts even earlier appeared to be acting upon it, and have shown much ingenuity where justice demanded a remedy." (See AIR 1978 Rajasthan P.140) Parihar (Priti) Appelant v. Parihar (Kailash Singh) Respondent.

The Andhra Pradesh High Court as well as the Delhi High Court also recommended strongly the need for such a reform which is clear from the following extracts:

> "It may be said, as indeed it was said by the learned Counsel for the respondent, that the changing social conditions require that there should be no rigid insistence on the maintenance of a union which has utterly broken down." (See AIR 1969 ANDHRA PRADESH 62).

> "Marriage is an alliance. In this case it has proved to be an unresolved conflict. In 1934 Sir Alan Herbert, the promoter of the matrimonial Causes Act, 1937 wrote a book. He called it Holy Deadlock. I think this marriage can well be described as a holy deadlock. It has long ceased to be a holy wedlock. Such a case as this cries aloud for reform. (See AIR 1976 Delhi 141 - Mohinder Pal Singh, Appellant v. Smt. Kulwant Kaur, Respondent).

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It is understood that the question whether divorce should be directly obtainable after such breakdown of marriage is under consideration. Instances, such as the present one, would help the authorities to amend the law to enable the parties to obtain a divorce when the marriage is apparently broken down, as seems to be the case between the parties before us. With such an amendment, the law could come in line with the English law." (See AIR 1978 Delhi 296 Mrs. Swaraj Garg, Appellant v. K.M. Garg, Respondent).

Even in other countries, we would see such a reform having been brought in tune with the changing concepts of marriage laws.

> "If even one of the parties adamantly refuse to consider living with the other again, the Court is in no position to gain-say him or her. The Court cannot say, 'I have seen your wife in the witness-box. She wants your marriage to continue. She seems a most charming and blameless person. I cannot believe that the marriage has really broken down." The husband has only to reply. 'I'm very sorry it's not what you think about her that matters, it's what I think. I am not prepared to live with her any more.' He may add for good measure, 'what is more, there is another person with whom I prefer to live. The Court may think that the husband is behaving wrongly and unreasonably; but how is it to hold that the marriage has nevertheless not irretrievably broken down? (Riddle Lectures 1970 - Reprinted in Raydon on Divorce - 11th EDN. p.3223).

> "In England, the last proposal in 1966 was the report of the Law Commissioners under the name of the 'Reform of the Grounds of Divorce'. They proposed three alternatives for divorce, namely: -1) breakdown without inquest, that is, breakdown of marriage evidenced by period six months' separation 2) divorce by consent and 3) divorce on the ground of separation which should apply with a difference both to divorce by consent and divorce without consent."

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"In England the twentieth century has been fundamental changes in this law. The principle of matrimonial offence came under pressure and is now destroyed. The new Divorce Reforms Act, 1969 has eliminated the doctrine of the matrimonial offence. There is now only one ground of divorce ---"irretrievable break down" of marriage."

"As Schwartz says 'Blakpool's plaint echoed the popular attitude towards the law', The feeling of the unsucessful litigants in matrimonial causes would be similar. Where there is a breakdown of the marriage, this in itself should be a cause for which divorce should be available under law. It would then be immaterial to enquire as to which of the two parties is at fault; the principle of breakdown of marriage as enabling the parties to obtain a divorce recognised in the U.K. since 1973 is at present only partially recognised by the Hindu Marriage Act by the insertion of sub-section (1-A) in Section 13 of the Act by the Amendment Act 44 of 1964" (see article 'Divorce under the Hindu Marriage Act - A Conflict of Principles in AIR 1971 Journal Section p.113).

Apart from the United Kingdom, countries like German Democratic Republic, People's Republic of China and U.S.S.R. have in their marriage laws made provisions for dissolution of a marriage based on the concept of irretrievable breakdown. Sec. 24 of the Family Code of German Democratic Republic is as follows:-

"A marriage may only be dissolved if a Court has established that the marriage has broken down irretrievably and thus lost any meaning for man and wife, the children and so for society as well.

If one partner applies for divorce, the court shall carefully examine the history of the marriage and especially take into account the interestss of any minor children of the family, and whether a divorce would mean unreasonable hardship for one of the partners."

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Article 17 of the Marriage Law of the People's Republic of China is as follows:-

"Divorce is granted when husband and wife both desire it. In the event of either the husband or the wife alone insisting upon divorce, it may be granted only when mediation by the district people's government and the judicial organ has failed to bring about a reconciliation.

When one party insists on divorce, the district people's government may try to effect a reconciliation. If such mediation fails, it should without delay, refer the case to the country or municipal people's court for decision. The district people's government should not attempt to prevent or to obstruct either party from appealing to the country or municipal people's court. In dealing with a divorce case, the country or municipal people's court should, in the first instance, try to bring about a reconcilation between the parties. In case such mediation fails, the court should render a decision without delay".

Article 14 of the fundamentals of legislation of the U.S.S.R. and the Union Republics on marriage and family reads as follows:-

"A marriage is terminated by the death of one of the spouses or by a declaration of the death of one of the spouses in a judicial proceedings.

During the lifetime of the spouses, a marriage may be dissolved through divorce on the application of one of the spouses or both.

A marriage is dissolved in a judicial proceeding. The Court takes measures to reconcile the spouses.

A marriage is dissolved if it is established by the court that the continued conjugal life of the spouses and the preservation of the family have become impossible.

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A husband has no right to institute a divorce case without his wife's consent during her pregnancy and one year after the birth of a child."

"In Australia, the same reconciliation between the breakdown of a marriage forming the main basis of divorce and the conduct of parties being taken into account in exercising the discretion to grant relief is found to have been made in the Matrimonial Causes Act, 1959. Sections 28(m) and 36 provide for dissolution of marriage by divorce on proof of circumstances showing the irreparable breakdown of a marriage. But section 37 gives the power to the Court to exercise the discretion to refuse divorce if it is satisfied that by reason of the conduct of the petitioner 'whether before or after the separation commenced or for any other reason, it would, in the particular circumstances of the case, be harsh and repressive to the respondent or contrary to public interest, to grant a decree on that ground on the petition of the petitioner."

However, certain apprehensions are raised in certain quarters that this amendment will be used by the husbands who are in far advantageous position in terms of economic and social status against their wives, who are generally economically weak and are dependent. These apprehensions can be allayed by providing necessary safe guards for compulsory maintenance and also making provisions for the children born out of the wed-lock. In fact as early as 1940s when changes were thought about in the Hindu Law, Mr. Justice Krishnaswamy Iyengar in one of his judgments observed as follows:-

"At no time did those standards (the ancient standards fixed by the Rishis) and the rules in which they found expression attain to universal acceptance in the country, even among communities professing the Hindu faith.....We can not shut our eyes to changes almost revolutionary in character and extent which have been for a considerable time past taking place in the structure of the Hindu Social order and in the ideas and sentiments which govern it. The old sanctions seem to have all but disappeared, sweeping away before them the old faith and the old institutions which did constitute in the past an integral condition of the indigenous fabric." (See AIR 1940 Mad 513 at p.517 - Durgaprasada Rao v. Sudarsanaswami).

Therefore, the present changes that are being made in the Bill under discussion should be welcomed as it only brings up the law in tune with the modern concepts of Marriage.

CONFIDENTIAL (9) (233

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 117

[Comments/suggestions received from Dr.T.R. Janarjhanam, MLC, Govt. Whip, Legislative Council, Tamilnadu_7

The proposed amendment will be giving the rights of divorce to either of the spouse on the ground of irretrievable breakdown of marriage. The term "irretrievably breakdown" is not defined in the Bill.

The Bill says if either of the spouse has been living separately for a period of 3 years continuously then he or she can move the court for divorce. In the existing Act living separately, even if it is less than three years can be a ground either for restitution for congugal rights or judicial separation. Which may ultimately leads to divorce.

Apart from that the act has been further amended enabling the spouse t move the Court for divorce by mutual consent.

Therefore it is my humble submission that living separately for a period of three years cannot be construed as a ground for irretrievable breakdown for marriage.

We are shouting. Be Indian - By Indian why cannot we have a common code of Marriage for all sex-religion and other groups. That will even infuse a sense of interity and unite the entire India atleast on the basis of Marriage Laws. Bigamy is an offence for Hindu's and Christian but not for Muslims.

The present Bill goes to the roots of Hindu fabric of Marriage and at the same time does not contribute anything to the National Integration.

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In our joint family set up there is nothing which is irretrievable in marriage and misunderstanding between the husband and wife irrespective of fact how long they have been living separately can be solved by our elders.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

GOVERNMENT OF WEST BENGAL
(Judicial Department)

No. 12317 - J

MEMORANDUM NO. 118

From

Shri A.C. Sengupta,
Joint Secretary to the Govt. of West Bengal.

To

The Chief Legislative Committee Officer,
Lok Sabha Secretariat, Parliament House,
New Delhi.

Dated Calcutta, the 3rd May, 1982

SUBJECT: Joint Committee on the Marriage Laws (Amendment) Bill, 1981.

Sir,

With reference to your letter No. 8/4(1)/81/CII, dated 25.2.82 on the subject noted above, I am directed to send 20 (twenty) copies of the report dt. 18.2.82, furnished by the State Law Commission, West Bengal. This Government fully endorses the views and replies of the Commission, as embodied in its report mentioned above, subject to the comments that the period of irretrievable break-down of marriage should be 3 (three years, as provided for in the proposed section 13C(2), and not 5 (five) years, as recommended by the Commission.

This may please be acknowledged.

Yours faithfully,

Sd/-
Joint Secretary.

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VIEWS OF THE STATE LAW COMMISSION, WEST BENGAL ON THE REFERENCE RELATING TO THE JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981 - Suggestions for Amendment .

This has the Reference to Judicial Department letter No. 4439-1 dt. 21.1.1982 forwarding therewith copy of the letter No. 8/4(1)/81/CII, dated 9.12.81 from Lok Sabha Secretariat. (Committee Branch-II), Senior Legislative Committee Officer on the above subject.

The Commission has given its thought to the subject under reference and following are the views of the Commission on the points referred to in the copy of the Lok Sabha Secretariat.

By Section 1 of the Divorce Reforms Act, 1969 (previous English law now repealed) there had been only one ground for divorce since 1st January, 1971: that the marriage had broken down irretrievably. Irretrievable break-down, however, may be established only by proving one or more of the five facts set out in Section 2(1) of the said Divorce Reforms Act, 1969. These were -

(1) Respondent's adultery, i.e., the petitioner may rely on the fact that the respondent had committed adultery and that the petitioner found it intolerable to live with the respondent;

(2) The petitioner may establish that the marriage had irretrievably broken down by showing that the respondent had behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(3) The petitioner may show that the marriage had irretrievably broken down by proving that the respondent had deserted the petitioner for a continuous period of two years immediately preceding the presentation of the petition;

(4) The petitioner may establish that the marriage had broken down irretrievably by showing that the spouses had lived apart for a continuous period of two years immediately preceding the presentation of the petition and that the respondent consented to the decree being granted.

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(5) The last fact on which a petitioner may rely was that the spouses had lived apart for a continuous period of five years immediately preceding the presentation of the petition.

The basis of the passing of the aforesaid Divorce Reforms Act, 1969 was the enormous social changes following the Second World War, which not only produced a vast increase in the number of divorces but left too much public discussion on the whole basis of the law. The idea that the purpose of divorce was to provide a remedy available only to the Innocent spouse for a matrimonial wrong committed by the other seemed to many to be a singularly out-dated concept. In many cases both spouses were guilty, and cross-petitions were launched purely to give the parties an advantage when it came to the question of financial provision. The social purpose of a decree of divorce is to enable the former spouses to remarry, and so it was agrued, it should be available to either spouse when the marriage has irretrievably broken down. To insist that divorce should be available only if a matrimonial offence has been committed, lays stress upon the symptoms of breakdown rather than the breakdown itself. The essential merits of the two views about the divorce can be summed up quite succinctly. The traditional theory (based upon the matrimonial offence) implied that an innocent spouse should not be divorced against his or her will particularly bearing in mind that many spouses have a conscientious objection to divorce and that a wife in particular may suffer serious financial hardship as a consequence of the decree. The more redical view (based upon the breakdown of the marriage) reduces the number of illicit unions where there is no foreseeable chance of the parties being able to marry or of their children from being legitimated because the partner of one of them refuses to release the other on account of conscientious scrupple, financial advantage or misadvantages.

The correct approach to irretrievable breakdown of marriage was observed by Sri Jocelyn Simon, President of the probate division.

'If even one of the parties adamantly refuses to consider living with the other again, the court is in no position to gain any him or her. The court cannot say, "I have seen your wife in the witness box. She wants your marriage to continue. She seems a most charming and blameless person. I cannot believe that the marriage has really broken down". The husband has only to reply: "I am very sorry, it is not what you think about her that matters, it is what I think. I think that I am not prepared to live with her any more". He may add for good measure, "what is more there is another person withwhom I prefer to live". The court may think that the husband is behaving wrongly and unreasonably, but how is it to hold that the marriage has nevertheless not irretrievably broken down'?

The aforesaid Divorce Reforms Act, 1969 has been repealed and re-enacted by the Matrimonial Causes Act,1973. ...3/-

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Bill No. 23 of 1981 [the Marriage Laws (Amendment) Bill, 1981] proposes to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 by introduction of Sections 13C to 13E and certain further amendments in Sections 21A and 23 of the Hindu Marriage Act. In similar measure the Special Marriage Act, 1954 is proposed to be amended by addition of Section 28A to Section 28C of the Special Marriage Act, and necessary amendment of Section 40A of the Special Marriage Act. The basis of the amendment is that there would be an additional ground of divorce, i.e. the ground of irretrievable breakdown of marriage.

Section 13C(1) of the proposed law provides that a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by either party to a marriage [(whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1981)] that the marriage has broken down irretrievably. This is in the spirit of the English law, i.e., the Divorce Reforms Act, 1969 re-enacted by the Matrimonial Causes Act, 1973.

Section 13C(2) of the proposed amendment provides that the court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition. The corresponding English law, i.e, the Matrimonial Causes Act, 1973, as discussed already, provided the ground for irretrievable breaking down of marriage in a case that the parties to the marriage had lived apart for a continuous period of at least two years immediately proceeding the presentation of the petition and that the respondent consented to a decree being granted. The Commission is not concerned with this particular provision because there is a more or less similar provision provided under Section 13B of the Hindu Marriage Act, 1955, living separately for at least one year and the respondent's consent to the decree being granted is necessary because the petition for divorce is to be presented by both the parties. The material portion of the Matrimonial Causes Act, 1973 bearing on this proposed amendment is the last ground of irretrievable breakdown of marriage discussed already, i.e., the spouses have lived apart for a continuous period of five years immediately preceding the presentation of the petition. The proposed amendment (Bill No.23 of 1981) prescribes the period of living apart for a continuous period of not less than three years immediately preceding the presentation of the petition. This provision is rather controvercial because it enables the marriage to be dissolved against the will of a spouse who has committed no matrimonial offence and who has not been responsible for the breakdown of marriage. On the other hand, it has been held by others as a measure that will bring relief to hundreds of couples

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who are now living in stable illicit unions but are unable to marry because one or both of them cannot secure release from another union; on the other hand, it has been castigated as "Cassanova's Chartor". Keeping in mind that this provision, i.e. Section 13C(2) allows the marriage to be dissolved against the will of his or her spouse who has committed no matrimonial offence and furth r that the duty of the Court is to endeavour for reconsiliation between the spouses as per provisions of Section 23(2) of the Hindu Marriage Act, it may be considered as to whether the period should be five years rather than three years as under the proposed amendment.

Section 13C(3) provides that if the Court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provision of this Act, grant a decree of divorce.

Section 13C (4) provides that in considering for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart. The corresponding English provision, which concerns desertion, prescribes that no account is to be taken of any period not exceeding six months, or of any two or more periods not exceeding six months in all, during which the parties resumed living with each other but no period during which the parties lived with each other shall count as part of the period of desertion. Keeping in mind the principles of Hindu Marriage Act, this period of three months appears to be proper and adequate.

Section 13C(5) prescribes that for the purpose of sub-sections (2) and (4) a husband and a wife shall be treated as living apart unless they are living with each other in the same house-hold, and reference in this Section to the parties to a marriage living with each other shall be construed as a reference to their living with each other in the same house-hold. In this connection we must bear in mind that living with each other in the same house-hold does not always imply that there has been no separation. There would be, however, separation if in fact the parties lived in two house-holds under the same roof, even whom, because of compulsion, the spouses lived in the same bed-room. Th onus of proving separation in these cases should be on the person alleging separation. In substance, living with each other in the same house-hold, in practice, may be living apart. This sub-section therefore may lead to hardship in some circumstances.

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Section 13D -

(1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under Section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this Section, then -

(a) if the court finds that the petitioner is entitled to rely on the ground set out in Section 13D; and

(b) if apart from this Section the Court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that this dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

This Commission must bear in mind that grave financial hardship to the respondent is to be construed subjectively in relation to the particular marriage and the circumstances under which the parties lived while it subsisted. It may be considered as to whether putting forward a case of grave hardship apart from grave financial hardship should operate as a bar to the decree of divorce on the ground that the marriage has broken down irretrievably. Putting forward a case that a divorce would result in the respondent's becoming a social out-cast in her own community might amount to a defence of grave hardship, justifying a refusal to the decree for divorce.

Section 13E provides as follows:

The court shall not pass a decree of divorce under Section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

EXPLANATION : In this Section, the expression "children" means -

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves;

and

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(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.

The provisions are salutory. It may be however considered as to whether besides making adequate provision for the maintenance of children born out of the marriage, provision is also made for the marriage of unmarried daughters.

The amendments of Section 21A of the Hindu Marriage Act and Section 23 of the Hindu Marriage Act are necessary corellaries to the proposed amendment and do not call for any comment.

The comments made above in connection with the amendment to the Hindu Marriage Act, 1955 applies to the amendment of the Special Marriage Act, 1954. No further comment is necessary.

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CONFIDENTIAL (18)

JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 119

[Comments/suggestions received from Shri J.G. Jayaseelan, 65, Housing Unit Colony, College Road, Tiruppur-2 South India]

With regard to the marriage laws (Amendment) Bill No.23 of 1981, it is a good thing that it is for the provision of giving divorce for the irretrievable breakdown of Marriage. At this point it is better to be considered that when the marriage has been broken down then there is no point in not giving the relief of divorce. The divorce has to be given to the husband when he applies for without any of the opposition of his wife. The provision of a section for the wife's right to oppose the petition on the ground of hardship is not at all necessary when the divorce is to be granted a good cause of the irretrievable breakdown of marriages. If the relief of divorce is not given to the husband when he is a petitioner, he will be put in a very difficult position of not to live with the legal wife and at the same time not to marry a second one. If the wife is opposing the petition to grant the divorce so as not to result in grave financial hardship to her, she must be made to be loyal in living with her husband. A women as a wife must either live slong with her husband or get away with divorce if not liked to live. There must not be an intermediary position life of breakdown and continuing the relationship of husband and wife by the law and for the law. If the legal wife is made loyal than the hardship will automatically be removed.

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The marriage is already broke ndown irretrievably and the position must not be made more and more irretrievable by not giving the divorce under the law. Due to the provision of a section of the wife's right to oppose, the husband will not be able to get the relief of divorce due to the evils of his wife and as the judge will refuse to give the relief of divorce by the provision of section. If the divorce is not granted, there must be provided a section for ordering the judicial living together so as to eliminate the hardship. The woman as a wife must learn to live with her husband as she married him to give the conjugal happiness and took part in all walks and circumstances of life. The woman must think that her husband must be her own only and not to be owned by any body else and she shall not allow her husband to be owned by others separation of life means the allowance of her husband to be owned by others. Separation of living will not solve the problem ever in life. Marriage is done not for the separation but for living together. Therefore the object of making the law must be making the husband and wife to live together happily and peacefully or if they don't like to live together there must be no opposition to get the relief of divorce on any grounds.

Separation of life is encouraged in the Marriage Act and the relief of divorce to the husband is not given when he applies for and at the same time second marriage is also not allowed to be made valid. If the legal wife is not living with her husband and refuses to give the conjugal happiness and at the same time the husband is not provided with the relief of divorce, second marriage must also be made legally valid with all the protections as that of the first one. Then alone there will be good cause of justice speaking in the law. The welfare of men as husband in all parts is also very important to be looked into as that of women because without men there is no married life of women.

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It shall not be forgotten that when the husband applies the petition for divorce it is to get the relief to make the dissolution of marriage of the first legal one so as to marry another one legally and to give the legal rights to the second one who is loyal to him. In the Act it is provideo that only after getting the divorce the second marriage is allowed to be valid and therefore it is very much necessary to give the relief of divorce without any oppoisition in the case of irretrievable breakdown of marriage. The happy leading of an husband shall not be spoiled by the legal first one who is not like to live with him and is not able to adjust to live in all the walks of life because of the rights given to her the law.

When coming to the provision of section for restriction on decree for divorce effecting children, the custody of the children must be left to either to the husband or the wife and therefore there is no problem arises and there is no necessity in this case for the restriction to give the divorce. The wife must leave the children and hand over them to the husband if she finds it difficult to maintain them. It is a vain thought of not to leave the children so as not to make the divorce to be given. Nothing shall stand in the way while giving the decree of divorce. If the wife wants the welfare of her and the children to be protected she must try to live with her husband. Whenever the wife has no mind to live with the husband the law should not encourage them by giving preferences of separation and maintenance of life. The legal wife must understand that all the properties and incomes earned by her husband goes to her in succession and therefore it is for her duty to live with her husband. When whatever earned by the husband goes to the wife in succession what is the difficulty and harm in living together. The wife must be made to realise her duty and loyalty to the husband.

Due to the definition of a wife in the code of criminal procedure in section 125 that even after a divorce a wife is eligible to get the maintenance until her remarriage, the law is not speaking of a justifiable and judicial one. It has to be changed that once the divorce is granted, the wife has no connection and communication to get the maintenance from the husband in future. Further the position of a woman after divorce in the acts is provided as that of a widow. If the divorced woman is made equal to that of a widow, then there is no meaning in the Act to be called giving justice.

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The position of divorced woman shall be made as that of before the date of marriage and then only there will be meaning of differentiating them. In the case of actually widowed wife, the marriage is not dissolved but in the case of divorced wife the marriage is dissolved and therefore it must be looked into that both of them must not be placed equally in law and the standard of life. The widowed wife is loyal but divorced wife is disloyal to her husband and position of place of life must be quietly different. Therefore it is very much necessary to amend the Act in such a way to place the divorced woman in a position as that before the date of marriage.

Coming to the important attention, I wish to point out that the present Act is responsible for the seperation of living of the legal wife and at the same time punishes the husband for not keeping the wife by passing an order of maintenance and failing to pay the maintenance, the court punishes by way of imprisonment. Only the law is responsible for making such a position. Eventhough the husband is ready to keep and maintain the wife, the law prohibits to do so and for the law, the law makers are responsible. The law should not prohibit the keeping of the legal wife. Like-wise there should not be any refusal and oposition in the grant of a decree of divorce for the irretrievable breakdown of marriage. Due to the preferences given in the law to the woman, the irretrievable breakdown of marriage is encouraged which is quite opposite to the object of marriage Act. The entire Act shall be amended in such a way to make the husband and wife to live happily enjoying the conjugal happiness or otherwise seperated with divorce without any opposition, if they don't like to live together or even one of them don't like to live with the other.

To conclude it is requested to amend the act to provide for the grant of divorce in the case of irretrievable breakdown of marriage without any opposition and anything standing in the way, so as to provide natural justice in the law by considering the above suggestions.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 120

[Comments/suggestions received from the representative of the Women's Democratic Association, Tamil Nadu & Smt. Mythily Sivaraman, President]

We oppose the amendment not because the new ground for divorce irretrievable breakdown of marriage cannot be a valid ground for divorce. It can certainly be a valid ground for divorce but the bill as it stands now lends itself to misuse by unscrupulous men which would result in great hardships to their wives.

The reasons for our apprehension:

1. The definition of the term irretrievable break down is vague. What constitutes such a breakdown of a marriage according to the bill would only seem to be the fact that the couple have lived apart for a period of three years prior to presenting the petition. The party seeking divorce on this ground has only to satisfy the court that the two have lived separately for whatever reason. The reasons for the separation and the party responsible for it etc. are not taken into consideration at all.

In our existing socio-economic set-up there are ever so many reasons why a couple are unable to live together. The husband may have left his home to seek employment outside and may not want to return home for various reasons with which the wife has nothing to do. Such men can hereafter make use of the new ground for divorce to get rid of their unwanted wives.

In these days when marriage is increasingly treated as a lucrative business by mercenary minded men to extract monetary benefits from their wives' families many wives may be forced to leave their husbands family due to harassment connected with dowry, including threat to their very lives. In such cases the husband can move the court under sec.13(c) of the bill for divorce and may even get it. What is the fate of the wife then? It is not merely the monetary consideration. Even if she is a working woman, it means the loss of so much money invested in her marriage and the loss of social status for the woman. And all this for no fault of

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hers. Thus, wives forced to live away from their husbands will be cheated out of their marriage.

Considering the extremely low status of Indian women in the socio-economic spheres the above mentioned consequence for women is a very live possibility.

2. In the cases of existing grounds for divorce, it is for the party seeking divorce to prove that the ground on which divorce is sought exists. But under the bill under consideration the court will grant divorce unless it is satisfied on all the evidence that the marriage has not broken down irretrievably. And it is for the respondant, usually the wife in our set up, to prove that this ground does not actually exist.

This move to shift the burden of proving the allegation wrong to the respondant, we fear, will further aggravate the already miserable plight of women who are deserted and left helpless by their husbands for no fault of theirs and due solely to the greed of their men.

Such husbands will be further helped to get an easy divorce by excluding Sec.13(c) from the purview of sec. 23(1)(a) of the Hindu Marriage Act which empowers the court to deny divorce to a party if it is satisfied that the plaintiff is trying to take advantage of his own fault.

The Bill may have been intended to help out genuine cases of matrimonial disharmony where parties concerned may not be able to get a speedy divorce under existing law. But in the process of rectifying existing deficiencies in the bill would seem to be creating more hardship for women.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 121

[Comments/suggestions received from Smt. J. Chatterji, Associate Director, Joint Women's Programme, 17, Miller's Road, Bangalore.]

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1. The first point which we would like to emphasise is that since India is a secular state, all marriages irrespective of religion should be registered, in the same way in which births and deaths are also registered. Marriages may by all means be conducted under the religious code but subsequent to their solemnisation they should be registered with the State.

In the absence of this rule, it becomes meaningless to amend the Marriage Laws Bill, since it does not give a universal coverage to all religions. Legal protection just like in most other matters of State administration should be available to one and all irrespective of religion strictly in keeping with the secular nature of our state.

2. Custody of minor children in case of divorce should rest with that spouse who is best suited in terms of physical, mental, and spiritual well-being of the child. Here we strongly emphasise the universal qualities of motherhood wherein it is accepted that for a congenial and happy growth of a child 'mother' is of primary importance, unless she is mentally deranged.

3. In the case of divorce alimony for either partner should be fixed depending upon the financial condition of the said partner as also the fact of custody of children.

4. Subsequent to irretrievable breakdown of Marriage, both partners should be free to re-marry. This is recommended with a view to keep up the social morale.

5. With a view to facilitating those who wish to solve family matters quickly and more comprehensively, family courts should be established. When there are juvenile courts and other specific courts to deal with related problems the establishment of Family Court is essential. Such a court will bring under its jurisdiction, matters related to the family as a unit. An extension of the family court should function as a marriage conselling Centre.

This family court should have the status of a superior court and shall have full jurisdiction in all matters relating to the family and should form part of the unified court system.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 122

[Comments/suggestions received from Tamil Nadu Joint Action Council for Women, Madras.]

The new amendment is to the effect that if the court is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition, it shall grant a decree of divorce unless it is satisfied on all the evidence that the marriage has not broken down irretrievably.

The term 'livingapart' should connote an attitude of mind meaning withdrawn from each other whereas Sec. 13(a)(5) gives the explanations that a husband and a wife shall be treated as living apart unless they are living with each other in the same household and that the term 'living with each other' shall mean living with each other in the same household.

It is feared that this might be taken advantage of by men who for ulterior reasons want to divorce their wives, as in the present state of society it is not uncommon that the spouses are compelled by circumstances to live in different places. Similarly this clause is also not going to help such of those women who suffer indignity, humiliation and oppression in the matrimonial house and still do not find a way to get out and then resort to the section to get the desired divorce. Hence it is submitted that this clause is modified in such a way that the term 'living apart' means not merely living in different households. Even if the spouses are living under the same roof it must be open for the aggrieved to approach the court and prove that there is no love lost between them and thus the marriage has broken down. In this aspect, some have expressed a view that if the spouses have not been cohabitating for three years, they are to be treated as 'living apart' which sounds ridiculous. Of course, cohabitation is also a part of marital obligation but that alone is not the end nor can be the yardstick to measure the marriage tie. The term 'irretrievable breakdown' is some thing more than physical separation. It could mean that the spouses are separated

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by heart and ceased of one or more of the conjugal obligations, for instance, where the spouses have different views of life and that they find it impossible to live together. Similarly, when a husband still keeps the wife in the house and continues to cohabit with her but also keeps a mistress in the same house but does not allow the wife to quit the matrimonial home. What is the protection afforded by this amendment to her? Should she be deprived of relief under this section just because she has lived all along in the same household of that of the husband and begetted children to him? We know many women who lacking independent means or security, dare not come out of the house and stay separately. When such is the case, how is it possible for them to live separately away from the husband for 3 years and then apply for the relief of divorce? Therefore legislation must provide for such cases also. In this aspect we submit that in extreme and exceptional cases where women seek divorce, this separation period of three years should not be insisted upon and that a suitable clause is added to enable women under certain circumstances to file a petition under clause 13 (c) even earlier as otherwise they will find it difficult to get maintenance and make a separate living.

Secondly, after the applicant establishes that they have lived apart for a continuous period of three years, the court has to satisfy itself as to whether the marriage has really broken down irretrievably. 'Breakdown' is not a matter that a Court can 'try' and come to a conclusion. Even if one of the spouses adamantly refuses to consider living with the other, the Court is in no position to gainsay him or her. No provision could be envisaged by which a Court can compel the one to live with the other. The position will be all the more worse if the applicant prefers to live with a third person. The Court may conclude that the party is in the wrong and unreasonable. But nevertheless how is it to hold that the marriage has not broken down? In our patriarchal pattern of families, normally a woman by marriage enters the family of the husband and naturally, in case of breakdown, it is most likely that she quits the house of the husband or is driven out. In such case, though she could establish living apart for three years, how is she to let in evidence to convince the court that the marriage has not broken down, when her petition is

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vehemently and vindictively opposed by her husband? By quitting the house, she loses access to all evidence such as correspondence, documents etc. and support of neighbours and servants of the house as valuable witnesses to support her case of breakdown. It might apply to a case where a woman is the respondent to the petition by the husband where she has to thwart the allegations that the marriage has broken down. Therefore there must be a special provision to enable a wife to get divorce just by establishing that there is no love lost between them and that the marriage has broken down irretrievably. At the same time stringent conditions must be laid down for men resorting to this relief such as deposit of a lump sum towards maintenance while filing the petition itself etc.

The amendment contemplates granting of divorce only when the marriage has broken down irretrievably. What is meant by irretrievable? What are the provisions made for finding out whether the breakdown is retrievable or irretrievable? Therefore it is most important to see whether there is any chance of reconciliation and it is most material to enquire what the applicant has already done to make the marriage a success or to become reconciled. Unless there is an effective machinery such as separate family courts or for that matter atleast conciliation centres, it would be difficult to adjucate such an intricate problem like irretrievable breakdown of marriage by ordinary law courts which are dumped with many other cases also. Many might feel that even the most fervent and sincere hopes of one spouse that there will be a reconciliation, cannot create 'a possibility of reconciliation' where the other spouse is unreasonable. It is true of course but it is not altogether impossible. Normally we expect cases where spouses stand at differences due to incompatibility-where mental, physical or behavioural-to take recourse to this provision and plead that their marriage has broken down and that they find it no longer possible to keep the marriage tie subsisting. In such cases mostly they are psychologically induced to take this extreme recourse. Therefore if only approached with delicacy and negotiated by persons qualified and trained in such reconciliations, many of the problems could be solved and many marriages could be prevented from breaking down. Reconciliation would become possible atleast in certain cases. Even if matrimonial relationship cannot be reconstituted under such guidance, the problems arising out of the disruption can often be solved with the minimum injury to the parties or their children.

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When the request for setting up of 'Marriage Counselling Centres' was placed before the Committee during its sitting here, the Chairman wanted us to give some more details and hence we place here for the consideration of the Committee the provisions "The experimental Scheme as to Reconciliation" that has been devised and adopted by Greater London under the "English Matrimonial Causes Act":

(a) The Court should refer any suitable case to the Senior Court Welfare Office,

(b) The latter after discussion with the parties should decide whether there is any reasonable prospect of reconciliation.

(c) If there is none, it should be reported to Court.

(d) If reasonable prospect exists, he should refer the parties to either

(1) a probation officer appointed for the purpose

(2) A marriage consellor from a small panel of experienced and trained counsellors specially chosen from within Greater London.

(3) Some other appropirate person or body indicated by the special circumstances.

(4) The persons to whom the case is referred must report back to the Welfare Officer, who should report to the court.

Even if complete reconciliation cannot be achieved, expert help will often enable parties to resolve, with minimum possible anxiety and harm to themselves and their children, many of the issues liable to be ancillary to the breakdown of a marriage. Short of this, the expert help should atleast identify the issues on which the parties remain seriously at variance and on which in consequence they require adjudication of the Court.

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In other countries also such Marriage Conselling has been established and proved successful. If an expert committee is set up, it is not impossible to envisage a pattern of counselling which would suit Indian conditions. Peaceful families form the strong foundation for a good society. Hence preservation of marriage is very important. The State cannot be indifferent to such a grave matter like this and think that its duty is over by paving the way for the spouses to get separated by passing liberal legislations of divorce. It would be utter failure of duty if measures to preserve the family unity are not taken. The state cannot shirk its responsibility stating that something is impossible.

It is most welcome and appreciable that the question of maintenance and financial provision for the wife and children are linked with the irretrievable breakdown clause. When a man sues under other grounds that are already in existence under the Act, the wife does not have the right to oppose the divorce on the ground of financial hardship. Therefore the clause is an improvement on existing divorce law. But the bill fails to clarify what kind of financial security should be ensured to the women.

In order to prevent divorce courts becoming tools in the hands of unscrupulous matrimonial offenders to exploit women, while introducing liberal legislations, stringent conditions for men and sufficient safeguards for women also must be provided. Liberalizations and relief to one party always brings with it harm to the other, especially women in distress who have not at all been responsible for the breakdown of the marital life. With the result, she is deprived of happy martial life with all its attendant benefits and status with respect to so many things that happen in a family, not to speak of the stigma the society places on such women. The only relief provided under such circumstances is to enable the divorced woman to claim for permanent alimony and nothing more. A woman enters the marital fold anticipating a secure and happy life and status of a wife and if through no fault of hers that is disrupted, permanent alimony itself is no satisfactory relief to her. It is our experience that even this paltry amount of maintenance awarded by the court is difficult to realise as the procedure for realising the maintenance is so cumbersome. No amendment is

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brought about to mitigate the hardship that a divorced woman would be facing. Why not a provision be made in the Act for the succession of the wife to the estate of the divorced husband with suitable safeguard and exceptions? Provision should be made to enable the wife to get a share in the properties of the husband as a compensation on divorce. Here we request the Committee to refer to the recent judgement of Hon'ble Justice Mr. Sathiadev of Madras High Court reported in AIR 1980 Mad 294 = (1980) 2 M.L.J.121=93LW186.

At the Committee's sitting here, the Hon'ble Chairman asked us whether judicial separation could be considered as a relief in certain cases before the grant of divorce. For this our submission is that, as the 1976 Amendment has made an improvement over the provisions that were existent before, it would be retracting to consider judicial separation. Anyhow, in certain cases, to afford relief to the woman in distress but at the same time not to allow the wrongdoer husband to take advantage of his own wrong and be benefited by divorce, provisions could be made to grant only decree of judicial separation. This takes us to another problem that is facing us that in some cases, one of the spouses who is at wrong may shift the blame on the other and try to concoct a false case of breakdown to get out of the matrimony. These provisions under Sec.13(c) would lend them easy access. We submit that divorce should not be made easy for such unscrupulous persons and if it is established that the petitioner's wrong or liability is the cause of the matrimonial unhappiness which led to the breakdown, no divorce should be granted but on the other hand the relief and judicial separation alone be granted. During the discussion on this point it was felt by majority present, that bigamy should be made a cognizable offence in which case it would provide a check on unscrupulous marriage offenders from divorcing their lawful partner to start a new life with another partner as also it would desist more women from developing infactuations for married men at the cost of ruining of his family.

We reiterate our oral representation that registration of marriage should be made compulsory, as it would help to solve many of the marriage problems. For this, a pertinent point was raised by the Committee

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whether while making the registration of marriage the dowry and other properties or gifts that are given to the bride should also be registered. We submit that this would present a lot of problems and is not desirable as even while contemplating a marriage why should we think of anything unforeseen and make marriages more commercial than they are today. More so while passing legislation to prevent giving or taking dowry and* all the more, it being an offence, nobody will disclose this fact. As birth and deaths are registered, provision could be made for registering marriages also.

Lastly, on the question of affording 'Legal Aid' to parties to the matrimonial cases, we submit that there already Legal Aid Boards which give legal assistance to deserving parties and especially to women. But the state machnery alone is not able to cater to all sections of the people and therefore this legal assistance could be given by some voluntary organisations also. This will help especially those people who do not know the rights and remedies available to them and in particular women who are in distress may be able to get legal assistance without much ordeal. Therefore if sufficient funds could be allocated to such of those voluntary organisations which come forward (to enable them to have a panel of lawyers and extend legal assistance) it would take us a long way to mitigate several hardships.

We respectfully place the above observations for the consideration of the Joint Parliamentary Committee to make suitable modifications to the bill or atleast propose new amendments incorporating the above suggestions.

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* also at a time when social reformess are raising their voice against dowry, it will not be conducive to make any provisions for recording such giving or taking dowry and

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 123

[Comments/suggestions received from Shri R.S. Krishna Iyengar, "Sri Nilaya" Srirampuram, Bangalore-7]

If the word "Marriage" in general, has, and the words "Hindu Marriage" in particular, have, any sacred meanings, it is necessary to specify in the Act how much period the spouses should have lived together just as it is specified that the spouses should have lived apart for three years immediately preceeding the presentation of the petition.

At present, there is no scope in the Hindu Marriage Act to understand the hidden intention of materialising the alliance of one with the other, except understanding that both the parties have agreed for the alliance and therefore the alliance has materialised.

If the career of the young girls, who, by virtue of time immemorial customs and practices, have got to break and desert their parental bond, and embrace a new marital bond in a new place with new atmosphere in the midst of new faces, should be protected, then it is necessary to specify the period the spouses should have lived together before starting to live apart.

Within a few months after marriage, and sooner than any body's imagination, dowry-deaths have occurred, and one of the spouses would have gone to courts. Is this the object of the marriage?

If the spouses have lived together one day only or one week only or one month only after the marriage, and lived apart for three years or more thereafter, what is the protection given by the Act to the weaker spouse, especially if it is in the nature of irretrievable breakdown. No clause in the Act including the 'restitution for conjugal rights' saves the marriage.

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It appears to me, as a common man, opportunity is given in the Act to destroy the marriage under specified conditions, but conditions have not been specified to protect and save the marriage from destruction.

My view is that the marital life of young girls should be protected and saved from destruction atleast for five years, and, it is, and should be, possible to save if a condition is specified viz. -

> "The spouses should have lived together atleast for five years before they started living apart, and the petitioner may go to court for divorce, only after completing three years of living apart."

The object of marriage, among other things, is to do natural duty, i.e. to answer the biological urge as and when desired by both the spouses, and maximum opportunity should be given to the spouses to live together to do their natural duty, whatever be their economic conditions and whatever be their caste-denomination - whether brahmin or harijan.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 124

[Comments/suggestions received from Pulavar Smt. Leelavathy Dharmar, Member, Tamil Nadu State Social Welfare Board, Ramnad District, 'Gnanagiri Illam' 12, Thiruthangal Road, Sivakasi.]

Though the concept behind the amendment is good, the time is not right for such liberalisation in Indian society.

All the circumstances should be considered including the conduct of the parties to the marriage and the interests of those parties and of children and other persons concerned.

The wife's right to oppose divorce proceedings only on grounds of financial hardship is limited. The upbringing of children are having always problems. At any rate the women are the sufferers and they must have some security also.

1. And so the dowry system should be made more strict and laws should be passed to register all marriages.

2. The wife should have a right to the ancestral property of her husband. If the husband has to give a share of his property to his wife, he may not want a divorce or the divorce won't be a hardship to a wife in the maintenance of the family and children.

3. The dowry, money, jewels & property given in the marriage to the women must be kept in the name of the wife as alife long asset. She gets interest from that money and profit or income from that property. The husband has no right to spend that money.

I have to say that we are having this practically in our side. As this follows by generation after generation in our side and so we meet no problem of divorce. And so I feel this must be made strictly to all, laws should be passed in this and must be carried out all over the country. In our side, the husband feels ashamed of spending wife's money and the society also maintains this. These raises no problem or talk about divorce. And so my request is to consider this point and to carry out this to all and simplify the divorce act.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 125

[Comments/suggestions received from Shri M.E. Bhaskaran Nair, High School Assistant, Kulathoor P.O. (Kerala).]

I. Women the weaker section of the human society may be given protection against Restitution Suits (H.M.A.).

If the wife is cruel and adament the husband will escape from her and restitution judgments are practically ineffective. But where the husband is cruel and adament the wife is dragged to the court and harassed in every way. In 95% of restitution suits meek and humble women are the victims. Women are comparatively helpless and weaker and do not enjoy equal freedom in society. Cruelty against them can never be proved in a court of law, except in cases of murder and that too very rarely. Generally men are against women in cases and women witnesses cannot be produced as women in India hesitate to go to courts. If the father, mother or brother gives her shelter or accompanies to court the cruel husband accuses of instigation and uses it as an easy evidence in his favour.

Often restitution suits against women are aimed at an easy divorsal.

In the present law there are only 10 grounds for judicial separation, cruelty, decaying leprossy etc. of which cruelty towards a wife can never be proved in a court of law.

So if the wife is not willing for reunion she may be allowed to live separately. Protection may also be given to women to safeguard them from attacks, harassment and humiliation.

II. Women may not be deprived of their children till the age of fourteen at least. Guardian Ward Suits and Guardian Ward Act of 1880 are deadly against women and so they may be abolished. The term 'WELFARE OF THE CHILD' is a flexible one and in almost all cases children, generally male children are given to the husband. If the mother of the husband professes

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that she would look after the child, the court gives the child to the husband. But really here 'Marumakkathayam' (matriarcal system) existed long till recently and so the husband's mother never loves her sons' children and generally even hates them. In almost all cases it is her dissatisfaction of the dowry that causes the troubles between her son and daughter-in-law.

An Act may be made against depriving the mother of her children below fourteen.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 126

[Comments/suggestions received from Shri U. Suresh Shenoy, S/o Shri U. Manjunath Shenoy, Goldsmith Street, Mulki, Dakshina Kannada Dist.]

The grounds for divorce under Section 13 of Hindu Marriage Act, 1955 are highly inadequate and it is very much appropriate that irretrievable breakdown of marriage be made a ground for divorce. It is rather surprising that the bill presented in Parliament was not passed in 1981 and referred to a committee since there was some objection from Women's Organisations on filmsy grounds. It is not denying that marriage is sacrosanct but a person seeks relief from the court only as a last resort. The grounds on which, a marriage may be dissolved by a decree of divorce are presently inadequate. Take for instance clause (iii) of Section 13 of the Act which provides as a ground of divorce - "has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

Though apparantly this clause is exhaustive, but it is common knowledge that the psychiatrist will never testify that his patient is of unsound mind. Therefore in cases where the marriage has broken down irretrievably if no divorce is granted it will do no good to either of the spouse and only result in frustration leading to acute mental agony.

It is but natural that the system of law has to adapt itself to the requirements of society and not be too rigid. It is therefore in the fitness of things that the Marriage Laws (Amendment) Bill be passed expeditiously making irretrievable breakdown of marriage as a ground of divorce.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO.127

[Comments/suggestions received from Shrimati S. Savitri, Advocate, Quilon Bar Association, Quilon (Kerala)_/

There should be a body consisting of social workers and others. That body should give advice to them. To file a petition for divorce in court they should certify that the husband and wife can not live happily and smoothly. Their opinion should have proper weight in the court. It is better that the Committee may be formed consisting of psychiatrists, doctors, psychologists, social workers and representatives of the public. I think at least 80 (eighty) percent of the problems can be settled peacefully or solved.

If they say that inspite of their persuation the husband and wife can not live peacefully and smoothly, in such cases divorce may be allowed.

At least for three years they must live separately. Divorce should not be with mutual consent.

Divorce should be granted, if there is absolute incompatibility of temperament.

If they have children divorce should not be granted unless it will affect their physical or mental health.

In conducting these cases of the poor people provision must be made for the payment of fees to the advocate by the Government. The parties must be at liberty to select their advocates. All can not go to the advocate appointed by the Government. So many poor people are not going to courts to redress their grievances.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 128

[Comments/suggestions received from

Delhi Legal Aid and Advice Board, New Delhi.] -----

(i) The word 'three' appearing in sub-section (2) of Section 13C be substituted by the words years so as to read as follows:-

"The Court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than (the period from 3 years may be substantially reduced) years immediately preceding the presentation of the petition."

(ii) The following proviso be added in sub-section (3) of Section 13-C:-

"Provided that the ground of irretrievable breakdown of marriage shall not be available to the husband who is found guilty of acts of physical cruelty towards his wife.

(iii) The following proviso be added to sub-section (3) of Section 28-A:-

"Provided that the ground of irretrievable breakdown of marriage shall not be available to the husband who is guilty of the acts of physical cruelty towards his wife.

(iv) A new section to the following effect may also be incorporated in the Bill:-

"Every marriage shall be registered within a period of 30 days from the solemnization of marriage by the husband failing which he will be liable for simple imprisonment which may extend to one month and he shall also be liable to fine."

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 129

[Comments/suggestions received from Smt. Shyamla Pappu, Senior Advocate, Supreme Court, New Delhi.]

I have replied to the questions that have been posed by you in the Questionnaire but since I wanted to add a rider and say that the grounds of irretrievable breakdown of marriage as an additional ground of divorce should be available to women only, I am submitting this Note. I am sure you are aware that there are certain grounds enumerated in Section 13(2) of the Hindu Marriage Act available even at present exclusively to women. Considering the apprehension voice by many women's organisations that the inclusion of irretrievable breakdown of marriage as an additional ground of divorce may prejudice women, I am making the above suggestion. Once the ground is available only to women, there will be no adverse effect on women. The amendment, on the other hand, will help such of those women who want to take the assistance of the additional ground.

The form in which the additional clause is to be introduced is given below for your ready reference:-

Present Section 13(2) of the Hindu Marriage Act, 1955.

"(13(2). A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the grounds,

(i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) xxxxxxxxxxxx

(iv) xxxxxxxxxxxx

Suggested (Amendment) to Section (13)(2) of Hindu Marriage Act, 1955.

(v) (a) That the marriage has broken down irretrievably,

(b) The court hearing such a petition shall not hold the marriage to have broken down irretrievably

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unless it is satisfied that the parties to the marriage have lived apart without cohabitation for a continuous period of not less than three years immediately preceeding the presentation of the petition.

(c) If the court is satisfied on the evidence, as to the fact mentioned in sub-section (2), then unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of the Act, grant a decree of divorce.

(d) In considering, for the purpose of sub-section (b) whether the period for which the parties to a marriage have lived apart without cohabitation has been continuous, no account shall be taken of any one period/periods (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other and resumed cohabitation shall count as part of the period for which the parties to be marriage lived apart.

13(3) The court shall not pass a decree of divorce under sub-section V unless the court is satisfied that adequate provision for the maintenance of children born to the spouses has been made consistently with the financial capacity of the parties to the marriage.

Explanation:- In this section the expression children means

(a) minor children

(b) unmarried or widowed daughters who have not the financial resources to support themselves

(c) Children who, because of special conditions of their physical or mental health, need looking after and have not the financial resources to support themselves.

NOTE: The expression 'children' shall mean children born to the couple or children that may be surviving from any other marriage of either spouse.

It is also suggested that similar provision may be made in the Special Marriage Act.

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NOTE: Kindly note that the following changes have been made to the amendment as incorporated in Bill No. 23 of 1981:-

(a) Irretrievable breakdown of marriage has been included in Section 13(2) and not in Section 13(1) of the Hindu Marriage Act.

(b) In clause (B), after the words "Have Lived Apart", the words "without cohabitation" have been added.

(c) In clause (d) after the words "have lived apart" without cohabitation has been added.

(d) A distinction has been made between "living apart without cohabitation" and "living with each other" for a period not exceeding three months.

(e) Again in clause (d) after the words "one period", the words "/periods" has been added.

(f) Clause 13(D) has been deleted.

(g) 13E has been renumbered as 13(3) and the following changes have been made:-

(a) For Section 13(c), Section 13(2) V has been substituted.

(b) "born to the spouses" has been substituted for the words "born out of wedlock."

(c) Note has been added expanding the scope of the words "children".

(d) 13(D) and 13(E) have been deleted.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 130

[Comments/suggestions received from Shri Rakesh Kumar, New Delhi.]

It is indeed good that you have invited the opinion of public in connection with the 'Irretrievable Breakdown in the Marriage' the Bill pending in the House for a long time. Needless to mention, sometimes circumstances develop in such a way that it becomes next to impossible for the spouses to compromise. Courts take years to solve the problem even with spending hard earned money unnecessarily.

I suggest that spouses living separately for more than 2½ years be treated as divorcees after filing a writ in the court.

MEMORANDUM NO. 131

[Comments/suggestions received from Shri B.C. Pandey, New Delhi.]

Innumerable people will be relieved of tension, worries, agonies and will get the chance of resettling in life with the passing of the Bill on irretrievable breakdown in marriage. The need of the time is the amendment in the Bill. Nobody is foolish enough to file suit unnecessarily without some special reasons. It is a must to give consent to the Bill on priority basis fixing a certain period of separation.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 132

[Comments/suggestions received from Shri S.C. Bhatta, 117 Jheel Kuranja, Delhi.]

If the marriage amendment Bill pending in the House for the last 1½ year be given consent and passed immediately, the bride burning cases will be less. Analysis have shown that 40% of the bride burning cases are because husbands are not in a position to get divorce on one pretext or the other though most of them are genuine and when they are depressed and dejected - ultimately they take the brutal step of either committing suicide and dragging wives for the act or in connivance with some other means. If they know that after a stipulated period they will be able to lead a normal life by taking divorce these sins can come to halt to a certain extent. So the Bill be passed in the coming session.

MEMORANDUM NO. 133

[Comments/suggestions received from Shri R.C. Dutt, Krishi Bhavan, New Delhi.]

To relieve sufferers from the menace to go to the courts, which is a cumbersome procedure and takes lot of time by which couples get old become addicted to bad habits is indeed remediable but promptly. No lady can live against the wishes of her husband provided he is fair enough. The girls of today are in the habit of demanding women lib now-a-days, of course it does not imply on all. Lot of money is wasted on lawyers for filing the cases. Any couple who is not in a position to live with his/her dignity and does not want a solution within a period of 3 yrs be treated as a divorcee if the girl during this period lives with her parents or relatives or in some hostel etc. The Bill be passed with immediate effect.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 134

[Comments/suggestions received from Shri B.B.Raj.]

When a couple finds it virtually impossible to live together any longer as a husband and wife, they should be crucified on the course of matrimony. The law on divorce should be uniform for all citizens. Divorce becomes unavoidable when the marriage is broken down beyond reconciliation. If the marriage is dead, what is the use of living as a husband and wife without talking to each other, harassing each other blaming each other, throwing mud at each other and above all defaming each other. There should be a law of separation where there is no chance of reconciliation.

I suggest that those couples living separately for more than two years be given separation decree w.e.f. the day they are living separately. Marriage Amendment Bill pending in the Parliament House since long if be given consent w.i.effect half of the problem of bride burnings will come to an end authomatically - as they will come to know that after a year or two they will be separated provided dowry brought by the girl be returned with a compensation of amount spent on dinner served to the guests.

MEMORANDUM NO. 135

[Comments/suggestions received from Shri C.Mohan.]

It is a well known saying that the marriages are made in heavens and with the wishes of God but when broken may be of any reasons God is neglected and blame is put on either of the party - what a double standard it is. Why not it is taken at that time that it is the will of God? Circumstances occur in such a way that it becomes uncompromisable either with the boy or girl to live with each other. As courts take lengthy time they go on living as its, normally the girl with her parents and in the meantime time passes and the chances of either remarriage or again for a compromise become dim and dim and they are left in the lurch without any alternative and without any chance. There should be a law with the unanimous approval of all without any delay with a minimum period of 2 years of separation and given divorce so that they get the chance of leading a life of their own and try to settle themselves.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 136

[Comments/suggestions received from Shri P.P. Khanna, Sector III, H.No. 910, R.K. Puram, New Delhi.]

A couple be treated as a divorcee if there is no chance of reconciliation and compromise and if the marriage has reached at a saturated point.

Couples living separately for more than 2 years be treated as divorcees.

Nominal compensation be given to the girl if she is not earning and if earning and her pay is more than the boy, no compensation be given.

Dowry brought by the girl be returned in whatever condition it is.

Take for example the case of Neena of Delhi. Her marriage was on the rocks immediately after 5-6 months and she tried to take divorce but her husband did not agree only to harass her. Lot of cases of this type are pending in the courts.

Cases are pending in the courts even for 17 years and the divorcees have not been granted. You can well imagine the plight of such couples.

In 1981 more than 3000 cases were filed for divorce and 95% of them are pending.

Same are the conditions in big metropolitan cities like Bombay, Calcutta and Madras.

Irrespective of whether one is rich or poor, educated or uneducated this problem is with every society.

Main reasons of divorce or illicit relations, addiction of bad habits, illness, differences in ideology, marriage against wishes. In certain cases both the parties does not want compromise only to harass each other out of jealousy or some other reasons.

Maximum period of separation be treated as 2 years.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 137

[Comments/suggestions received from Shri R.C. Ranjan, Delhi.]

This bill will help parties where there is a irreconciliable breakdown of marriage. How stringent or liberal the provisions are, is a matter where opinions differ.

The present law covers cruelty, disease, conversion, adultery and mutual consent the grounds for divorce for husband and wife, however, these provisions still compell innumerable couples to live on with the tag of marriage because these cases are not covered under any of the grounds specified above. So matters become even worse because one of the parties is not opposed to give consent of divorce for personal or social reasons. Quite often one of the parties might withheld consent even when they are neither living nor ever want to live together simply to harass the other and block his/her way of remarriage. Under the circumstances, one is bound to cook up all sorts of indecent and vulgar and false allegations against the respondent and their main aim becomes to defeat the claim of the person who has filed the suit. Similarly, the respondent tries to put stronger counter allegation which may be unsauvoury.

To reduce the sufferings for the parties connected in such cases, the bill will help a lot of people. Maximum period of separation should be treated as 2-3 years.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 138

[Comments/suggestions received from Shri F, Joseph, Social Worker, Bangalore.]

The very fact of 3 years separation would grant automatic divorce for the parties, while mental cruelty is really difficult to bear for both the parties. In the case of the couple who have a child of any age divorce should be entertained, the court should not agree for any financial provision, because one cannot understand the inner dept condition, problem and sufferings from both the parties and divorce should be granted within 3 months (for instant the husband may not be well employed).

Dowry should be made strict that both the parties do not accept and the women should be married with proper procedures agreed by both the parties.

But in cases like illict marriages, without the knowledge of the parents from both parties, well such cases should be settled by themselves, or this will lead to more cruelty later.

Last but not least, in order to man and women to live in peace in this world, they should be given seperation soon, reducing mental tension and neither from both the parties. No matter what their jobs may be it should not be disturbed. But if a woman has cheated the man/the marriage and both parties are not in peace, divorce should be given soon, even though they have a child . Because marriage are domestic problems, today a couple may be seperated later they will be reunited by themselves, this is a problem not only in India but all over the world.

Once the court passes the decree order for seperation after a period and the same couple should be given the liberty to marry once again to some other whom-ever they wish.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 139

[Comments/suggestions received from K. Mythili, 26 Luz Church Road, Mylapore, Madras._7

I am a victim of a love marriage, which could not be prevented by my parents under the New Marriage Act. I was a college student studying in the B.A. Class. I was rather bewitched to love a young man, completely different from me in every respects such as complexion, behaviour, conduct, culture, temperament, character, food habits, addict to drink and above all caste. Who his father is even is not known to any one of us. It is doubtful if that man at least knows his father. His mother, a film actress, may perhaps remember the boy's father. Thus there has been the utter incombatibility in every respects between myself and the man to whom I happened to be married.

From the very day of marriage, ill treatment began. I was asked to cook non-vegetarian food forced to taste it and eat it. The man was ever rough in his conduct towards me used to unnatural sexual practices, nagging etc. His mother and himself being film artistes, having amassed good wealth were repeatedly demanding dowry to be got from my parents. They were demanding the ornamgnets, silver and other vessels procured by my parents for me to be got from my parents and to be handed over to them. Abuses and torture to me as well as to my parents over phone became unbearable. Hence I left his house within two months from the date of the fateful marriage and began to live under the care of my sister and my parents for the past four years and more. Even during this period of my separation, I have been regularly abused and threatened for my life even by him over phone and also creating scenes in my sister's house

In order to get remedy from all my sufferings I have been pleading to his mother to obtain her son's consent for the dis-solution of the marriage and divorce on mutual consent, but all in vain. He is jolly in his film acting profession.

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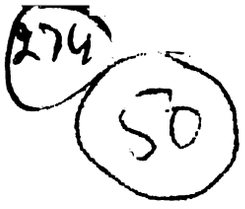

For going to the Court of Law for remedy, the onerous burden of proving cruelty under the present Act is on me, a weaker poor young lady. All the rigours and safe-guards prescribed in the present Act are no doubt necessary in the interest of the female partner against whom her husband goes to the court and get success easily. But what will be the plight of a young lady like me who has foolishly chosen her husband against the matured warnings of her parents and who is living separately from her spouse after the marriage for Four years and more.

In these days of widow's re-marriage has become quite common even with the blessings of the religious gurus, why a young lady like me should not get the marriage, foolishly done, dissolved and why she should not begin a fresh life?

I therefore request the Parliamentary Joint Committee on the Marriage Laws (Amendment) Bill to consider cases like that of mine and help for passing the Bill suitably to make the rules easy for passing orders on voluntary petitions from wives for dissolution of marriage and divorce, if they happen to live for three years and even for a shorter period from her spouse, without the onerous burden of proving at a great length, which is very difficult for the weaker sex.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 140

[Comments/suggestions received from Dr. J.N. Gadhok, Sector 17, 1030, Old Faridabad, Haryana.]

A. IRRETRIEVABLE MARRIAGES:

(1) Sexual temperament - differences in.

(2) Personality clashes.

(3) Veneral disease by a male after marriage.

(4) Drunkenness of either partner when the treatment fails to cure or a drunkened refuses to have treatment.

(5) Any other such factors/acts that inflicts upon either partner wounds to happiness of either/spouses they should be regarded as course to irretrievable marriage.

[partner, and these acts are deliverate and over a longer period. What ever the acts whether in the eyes of society they are minor or major but if they seems to affect the hapiness of either

(6) other/factors I am sure you know a lot about them.

Examples.

A girl from a Sikh family of Chakwal now in Pakistan, committed suicide (between 1945-47 exact year forgotten) within a week of her marriage by setting herself on fire with kerosene oil, in Nairobi. Her only brother now has a chemist shop in S.W. London. She ran away from her inlaws house on the very next day and returned to her mother, but mother and brother took her back to her husband. The reason for her running away from her husband was that with every act of sex, he would want to have further sex. The result in the morning was that she and her body was sore and she could not stand.

What is differences in sexual temperaments.

It is every where in the world (Also see Dr. Kinsley Reports in American Sexual Impulses) that women and male differ. Compatible of marriage is when one has found compatible of sexual temperament.

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Some women feel great pain of soul if they have relations more than once a month. The desire for act is only after mensutration.

Others would enjoy act every night probably more than once.
Similar with men.

2. Personality clashes.

When because of differences in personality e.g. Husband is a rogue cheats others where as wife have great objection on it vice versa, there is continuous unhappiness in home and because of which it affects the children.

3. Veneral diseases by a married male.

Once wife has forgiven her husband she cannot have re course to this clause, but subsequent act of her husband should have bearing on the acts of foregiveness.

4. Drunkenness has already been explained.

5. Any other such Acts should include where her husband or wife prohibits either Spouse or influnces against any occupation or Acts that will bring happiness to that person. e.g. a wife wants to do some social work and husbands objects. Suspicious that his wife may be late and have relations with others. Any such suspicions Continjall should be cause of divorce.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 141

(Comments/suggestions received from Shri M. Kunhi Krishnan Nair, Ex-Vice Chairman, Block Development Committee, Kuthuparamba, Cannanore District, Kerala)

The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties in the marriage have lived apart for a continuous period of not more than 5 years immediately preceeding the presentation of the petition. In place of "The court hearing such a petition shall not hold the marriage to have broken down irretriavably unless it is satisfied that the parties in the marriage have lived apart for a continous period of not more than 3 years as proposed".

Three years of absence of married couple from each other is too short a period for presentation of a petition for breakdown of marriage. In these days when educated couples are compelled to seek jobs elsewhere in foreign countries they will have their own difficulties for joining together. National and International situations may come on the way and the couples may not be able to join together though they may carry correspondence with each other. Institution of marriage is considered as sacred and unbreakable will loose its sancity and the courts are likely to be flooded with such petitions of break of marriage if the proposal under reference is passed.

In these days when highly educated people such as Professors, Doctors Engineers and other specialists have to spend periods on deputation to other foreign countries such as U.K., U.S.A. and U.S.S.R., Germany etc. if such an amendment is passed I am afraid many of the ambitious youngsters will have to be discontented with their lot and come back to their native countries to satisfy the law.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 142

[Comments/suggestions received from Shri K. Balasubramanian, Officer, State Bank of India, Elathur, Calicut District.]

I am the one affected by the regid Hindu Marriage Act and I hope that the Hindu Marriage Act will be amended to make irretrievable breakdown of marriage as a ground for Divorce, without further delay, giving relief to so many in distress due to a unhappy seperation after marriage. Even after 7 years of separation there is no solution under the present Law. Even my petition for restitution of conjugal rights was dismissed by the Court. My wife refuses to come and live with me alleging cruelty. If the present bill is passed it will be a blessing to solve such a predicament even after years of separation. I hope that there won't be any further delay in passing the bill as it was recommended by the Law Commission as early in the year, 1978. I like to mention here that a separated wife can get a Divorce, if she proves that she getting maintenance for the last one year and there is no cohabitation between the couple for that period, but for the man there is no provision for that.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 143

Comments/suggestions received from the Joint Registrar of the High Court of Orissa, Bhubaneswar.

The Court agree with the suggestion that the Hindu Marriage Act be amended with a view to making irretrievable breakdown of marriage as a good ground for grant of decree of divorce.

The circumstances for such breakdown, apart from the fact that the marriage has broken down, be separate living of the spouses for atleast three years before the date of presentation of the application for dissolution of marriage and further that the spouses should not have lived together anytime during the said period of three years.

The parties should have lived separately for a period of three years before the date of presentation of the application for dissolution of the marriage.

The presence of children should not be a bar to the grant of the decree, but adequate provisions should be made for safe-guarding their interests (already provided in the proposal).

Even if it is established that there has been any irretrievable breakdown of marriage there should elapse a sufficient time lag and it should be considered if the period of three years prescribed in section 13C(2) is adequate and further before the final dicision, the Judge should make attempts at finding out if a reconciliation is possible and efforts for reconciliation should be made by a Judicial Officer of the rank of District Judge and matrimonial matters should not be permitted to be handled by the Sub-Judges as per the existing practice and if adequate safeguards as aforesaid are built into the provision the proposal is unobjectionable. It is unrealistic to continue two persons in bondagde when the emotional basis for it has snapped and has not been retrieved during the period which is long enough for making possible retrieval.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 144

Comments, suggestions received from Shri T.M. Abdullah, Advocate, Chovva, Cannanore-670006.

Now that Marriage Law is proposed to be amended, what concerns my interest is amending the Special Marriage Act making it acceptable to Muslims. Muslims do not resort to it because the spouses and their children, marrying or registering the marriage under the said Act will be governed by the Indian Succession Act for inheritance which is contrary to their personal law. In other respects the Act has good provisions from the Muslim point of view also. With an amendment that the parties and the progeny will continue to be governed by their personal law of inheritance will make it useful to Muslims as well.

Now there is no law making a Muslim marriage registrable except local statutes in Assam, Bengal, Bihar and Orissa for voluntary registration. There are difficulties in proving Muslim marriages by oral evidence, much more in obtaining a marriage certificate acceptable to courts and other authorities. These difficulties can be overcome by having an All India Act for registering Muslim marriages. If the Special Marriage Act is amended as above-suggested, this Act will serve the prupose of registration instead of a separate Act for registration.

I may suggest that compliance with statutory law may be encouraged by throwing handicaps in the procedure for seeking remedies through court in cases of unregistered customary marriages. Egypt without prohibiting plural wives for Muslims encourages monogamous marriage by grudging the aid of a court to 'other wives' seeking remedies in breaches of matrimonial obligations. Without going so far as that, some repellent features may be provided to non-registration of marriages, or more attractive features to registration, taking care, of course, to see that the 'equality' test is not infringed.

These lines may please be considered as my evidence before the Committee.

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JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 145 .

Comments/suggestions received from Women Graduates Union, Women Graduates Union Road, Near Colaba Bus Station, Bombay-400 005.

As regards safeguards, the following points emerged:

1. It was felt that ex party decrees should not be given except in cases where the Court was absolutely certain that the other spouse was aware of the divorce application being before the Court, but was deliberately not appearing.

2. The majority feeling was that it was not enough just to say grave financial hardship, but hardship as regards finding accommodation (particularly in highly congested places such as Bombay), and any other hardships that may arise, should also be given due consideration.

3. A third point arose just at the end, and there was no time to discuss it at the meeting, but the Committee may give it thought. One of our Lawyer members suggested that a Hindu wife would suffer enormously from the divorce because she would lose her right of maintenance under the Hindu Adoption and Maintenance Act - which right otherwise would apply even after her husband's death.

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JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM No. 146

Comments/suggestions received from Shri K.M.Dhar, F-533, Kalibari Marg, New Delhi.

The marriage law amendment bill which was introduced in the Lok Sabha on February 27, 1981, seeks to further amend the Hindu Marriage Act 1955 and the Special Marriage Act 1954 with regard to grounds of divorce. Needless to mention that in the present existing procedure to take divorce even for a genuine party who deserves it is extremely difficult to get divorce, unless and until the other party is willing to part with. If any of the party is not willing to part with, either husband or wife to take divorce it takes years and years in the courts merely wasting money, energy, time, causing tension and worries, increasing apathy and by the time if luckily the divorce is granted both the parties lapse 7-8 years of their age in which they would have settled if the divorce would have been granted within first 2-3 years of filing their petition. One can well imagine the fate of such couples. Keeping in view all such facts it will be much better if the law be further simplified relating to divorce and giving chance to the party for resettlement, in life once again.

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JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 147

Comments/suggestions received from Mr. A. Kumar, 14-A/288, W.E.A., Karol Bagh, New Delhi.

The every-day increasing gruesome murders and burning of young brides because of their failure to fetch a handsome dowry to correspond to the expectations of their in-laws or failure to meet their subsequent illegal demands placed on them after marriage is appalling. But more than this there is another class of young wives, numbering thousands and thousands, who for failure to placate their fastidious and avaricious dowry seeking in-laws, were either forcibly shoved out of their matrimonial houses or having regard to the physical and mental tortures inflicted on them they themselves chose to quit apprehending danger to their person in matrimonial homes. All such faultless and innocent women have no option but to languish away from their spouses. In such cases the egoisitc husbands calling themselves to be "Khandanis" also never make any attempt to bring back their wives to their matrimonial homes and the gulf of separation goes on widening with the lapse of time. In such cases if the husbands are granted decrees of divorce under the proposed amendments it will simply add premium to their unsatiable greed and give fillip to the dowry system as such husbands will only manage to see that either their illegal demands are met to their satisfaction or the wife stays away for the requisite period of three years so as to pave the way for an easy divorce.

I, therefore, request that necessary safeguards may be made in the proposed amendment that where wife is the respondent and the irretrievable breakdown of marriage has been caused by her failure to meet the illegal demands of her spouse and the husband has made no attempt to bring back his wife to her matrimonial home, the petitioner-husband should not be entitled to the decree of divorce.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 148

Comments/suggestions received from Shri S.R. Mahantan, Hawbuck Grange, Khalini, Simla-171002, (H.P.).

a) The expression 'irretrievable' means incapable of recovery or repair. The legislature perhaps took note of such irreparable breakdown of marriage and sought to make amendment in the Hindu marriage Act in order to simplify the procedure, providing quick and speedy divorce in such a breakdown.

b) Continuous extra marital relation of the respondent even after the presentation of Petition under section 13 of the Principal Act; or

c) Non-consummation of the marriage for a period of one year after the solminisation of the marriage; or

d) The other party has renounced the world by entering any religious order; or

e) The party has ceased to be a Hindu by conversion to another religion.

f) The other party had been suffering from virulent form of leprosy or veneral disease which were concealed at the time of soleminisation of the marriage or during the negotiation of alliance; or

g) The other party has eloped with some person without leaving behind any trace of his/her whereabouts and were not heard of for a period of two years after the elopement; or

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(h) The husband has been convicted for committing rape, sodomy or bestiality; or

(i) The other party has remarried during the life time of the spouse.

(j) The other Party (wife) has deliberately neglected her husband and children and has openly started living with her paramour.

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JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981

MEMORANDUM NO. 149

[Comments/suggestions received from Shri Ishwar Chandra, Advocate, Chandigarh.]

It is really a surprise to read any newspaper of any day, that so and so girl has died due to being burnt by her in laws, because she could not fulfil their demands of dowry. Further if one looks the cases filed in the court of law of divorce he will not find a single case in which the girl's side had taken plea other than demand of dowry. The plea of the girl is only that as she could not bring dowry to the satisfaction of her in-laws she is being divorced or she has been compelled to file the divorce petition or has been burnt. How can it be true or possible that in 100 percent cases dowry has been demanded, the point on which nobody has ever thought and analysed. It was reported in Tribune newspaper in the month of June/July 1982 that 400 cases of women burning have been recorded since October 1981 and in all cases the cause of such mishappening was demand of dowry. Has any time girlside reported the deeds of their girl, NEVER. It will never be reported that the girl has committed suicide because of her bad habits, faults and her past affairs. It is the bad luck of mankind who has been blamed on the plea of dowry. No man marry to kill the other. Not all the people marry for the sake of money. Interesting thing is that nobody in this country has ever tried to find out the real causes behind these tragedies, means what are the causes of such burning of women and compelling a spouse to file a divorce petition. The reason is that the country of this people have soft corner for women that is why they never blame her. This does not mean to say that people do not demand money, death are not occuring due to this reason, the cases are filed for this purpose but it cannot be possible that 100 percent cases of burning and divorce are due to demand of dowry which is pleaded by the girl side. A very interesting thing to note in this regard is that such deaths and cases are only occuring in Hindus and Sikhs who are covered by the Hindu Law and not in Muslims, Christians or in other religions who are not covered by Hindu Law. Seconoly these deaths and cases are more in Northern India than of South, East and West. Is dowry not being

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demanded there or being taken there? Why not. The reason for high number of cases in Northern India are due to fashion, lavish, luxurious life and competition of status and going ahead from others, and these expenses lead to the treagedies whereas in South, East and West these things are not there, because people are very simple and poor. The reason for increasing number of deaths and cases in Hindus are due to rigidity of Hindu Law which does not grant divorce easily, whereas Muslims and other Laws grantthe same easily and in no time. The effect of which is that in those religions people have fear that if they would not adjust accordingly to their spouse they can be divorced easily, therefore they have better understanding between them. Whereas under Hindu Law divorce is granted with gr at difficulties and sometimes it is not granted even after disputing in the courts for 5 to 10 years, which compell parties to the marriage to get rid of other by killing, by making the other parties in trouble by suicide so that not only his or her spouse but his family member may suffer throughout the life in courts and jails. In case of Hindu law if one spouse want to get rid of other but he could not take initiative in the court than on the initiative of the other spouse, the former one become adament though he is also interested for divorce but he thinks that in case he can get some money from the other he should avail the opportunity and thus harass the other spouse.

Witnesses in these cases are produced by both the parties which is a costly affair not only in terms of money but also in terms of time, which has got no relevancy because it is the man and woman who has to live together and not the witnesses. So the provision should also be abolished because it only increases the rift between the parties and make defamation.

As far as burning/divorce cases are concerned if deep study is made one will find that 40 percent cases are due to lust of dowry, 40 percent due to character of the girl say bad or non adjustable or her past affairs which were concealed till the date of dispute, and 20 percent due to non-adjustment from the man side.

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No man marry a girl just to kill her or divorce her but marry for his leisure and pleasure. When the things from the girl side goes to such extent tht she cannot live because her past affairs is being pointed out by her husband or in laws, to escape from these defamation and to take revenge from her in laws who has opened her past affair and pointed her to amend her ways which she cannot mend she takes the shelter of fire by burning herself and thus escapes from her defamation and her parents too, to hide the deeds of her daughter start blaming the parents of the boy that as he could not fulfil the demands of money his daughter has been burnt. How nicely the plea is taken. How it can be possible in 100 percent cases dowry is demanded no one has thought on this.

Why there are no such deaths in Muslims or in other religion which are not covered by the Hindu Law because they are at full liberty to leave the other spouse by way of divorce but in our country man is considered as an animal means once he is wedded he has to remain with th lady. The society has also full sympathy with the divorcees and allow second or third marriage even of girls which Hindu society does not allow. So to find out causes of death or divorce one should see what is the income of the parents of the girl not verbally speaking but from the Income Tax, Wealth Tax records or the records where the father of the girl is/wasw working whether he is/was in a position to pay such dowry as he is speaking. If the same is found incorrect means that if his income is not such that he can pay such dowry than he should be punished. We all including our Government cry that dowry system should be abolished than why people marry their daughters when money is demanded, Why they pay such huge dowry, why the government does not punish the giver of the dowry for the reasons that he had given dowry knowing the law. Another drawback in Hindu Law is that a maintenance application if filed in the Session Court where the divorce petition is filed because the jurisdiction start from this court. Secondly, the application is filed in the court of Chief Judicial Magistrate, the very lower court to Session,Judge, means the petition for one cause is filed in two courts of different jurisdiction. The petition in the Session Court is decided on the preliminary issues which is normally decided within 3 to 4 months of filing of the petition but the petition in the court of Chief Judicial Magistrate is decided from 2-3 years. So if the court

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of C.J.M. give his decision against the decision of the session court then what is the value of the Session Court which is a higher court. The law provides that the decision of the higher court will be implemented by the lower courts which is not being followed in Hindu Law. The appeal of the judgement of the Court of C.J.M. has to go to the Session Court after some channel them if session court give judgement according to the judgement of the C.J.M. Court means against his own judgement then what is the value of its earlier judgement and if it gives judgement against the judgement of the C.J.M. court then what is the value of providing this facility and provision means this facility is provided to the women side just to harass the man side for three to four years. Though law maker will say that these are two different type of petitions provided in the law one is civil petition which is filed in session court and the other criminal petition filed in C.J.M. court. But they never try to see what is the effect of both these petitions whether they have to be decided onthe same grounds and sources or the other. Then why section 10 of civil procedure court which provides that if the matter is Resjudicata means the matter has been decided by one court between the same party on the same subject cannot be brought to another court. Here also Session Court a Higher Court decide the application of maintenance within 3 to 4 months then why the application is being entertained in the C.J.M. court by violating the provisions of the Civil Procedure Code. Secondly section 11 of the Civil Procedure Code also provide that if the matter is sub-judice before the Court the same cannot be decided by any other court then what is the idea of violating this provision in the Hindu Law is beyond one understanding. Further no distinction has been made on the petition of earning applicant or petitioner and the petitioner who is not earning means the petition from the spouse having sources of income should not be allowed to file the peition because the motto of such petitioner is only to harass the other one. So in case the Society, Government want that there should be no deaths of woman in their in-laws houses, the number of divorces are reduced as in other religions which are not covered by the Hindu Law. it has to do the following things means the following provisions should be provided in the Hindu Law.

1. Divorce should be made easy as in Muslims Law This will not increase the number of cases of divorce/ deaths but will reduce as both the parties (husband and wife) will have fear that if their disputes are not checked by themselves, if they do not respect honour the other spouse, the other will easily leave him/her means it will encourage

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them to live a better life. If one see in Muslim Law wh re divorce is granted so **easily** that the spouse who want to have divorce has to go to the house of other spouse and say "I GAVE YOU DIVORCE" thrice and divorce is granted that is why cases of woman deaths/sucide or divorce are less in that religion and if the same are compared with Hindus the same will be negligible perhaps one or two say not more than ten cases are reported of de-ath by burning in muslims women. Is dowry not given or taken by them why not they too take and give but law is helpful to them which is not in case of Hindus here one has to spent his major portion of life on litigation even then there is no surety whether he will succeed or not.

2. If both the parties make allegations and counter allegations against each other then there are no chances of their living together. In the Court both the party try his level best to defame the other even then the court does not grant them divorce and think that they can live together. Hence it should be made a ground of divorce that if allegations and counter allegations are made by both the parties then divorce will be granted because both are not happy with each other.

3. Period of living together and separate should also the ground of divorce because if during the major period of the married life has been lived by the parties separately then can they live together after filing of case of divorce never.

4. If the girl takes service far away from the place of her husband means dissert him it should be the ground of divorce, means grounds of dissertation should be made more simple.

5. Evidence system in divorce cases should be abolished. The matter has to be decided between husband and wife then what is the requirement of evidences to look into the faults of other because the witnesses always speak in favour of that party who has produced him in the court.

6. Appeal of the judgement of the session court where the petition is first filed and decided on divorce should also be abolished in these cases but the time for reconcilation should be provided in all cases if straight way divorce cannot be granted and both the parties should appear before the court after a certain period say after 4 months, 8 months or 12 months as in the case of Muslim Law

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is provided that the man sho has divorced cannot marry again for six months why this time they had provideu if the parties are interested to live together they can do so. If the parties during the period provided by law could not reconciled they should be divorced and then also time should be provided so that if there are any chances of reconcilation they may avail.

7. Maintenance peition should be admitted only from that spouse who is not earning or having a source of income independently if the spouse is earning then the petition should be rejected immediately and if a party just to claim and harass other leave the service to claim the maintenance that should also be rejected of preliminary issues.

8. Dowry point should be decided keeping in view the sources of income of the father of the girl and not simply of her saying. The income should be verified from the record of Income Tax Wealth Tax and records where the man is working. This will also help in dragging out black money and will reduce the false cases filed by the girl side to harass theman. Means to say law should have sympathy with man also. He should not be neglected as is being done today by the present Act. Secondly if the girl side gives more dowry he should also be punished this will really bring down demands of dowry because they will know that they are not going to get the dowry.

JOINT COMMITTEE ON THE MARRIAGES LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 150

[Comments/suggestions received from Shri Senapathi Gounder, M.P., 219, North Avenue, New Delhi-110001]

It is neither feasible or advisable to enumerate the circumstances either illustratively or exhaustively. Complete freedom and discretion should be given to the court to deal with each case according to equity and justice of each case.

2. It is familiar knowledge that in innumberable, thousands of cases on the spur of the moment for a little and trivial quarrel arises between couples, thoughtless couples magnify the differences and carry them to extremes. The act should insist upon the couple living separately for one and a half years and that too in circumstances showing reconciliation totally impossible. After this period of one and a half years, when the application is filed by one of the spouses, the Court should insist proof of separate living for 1½ years.

3. I understand that nowwhile functioning under Sec. 13(b) of the Act, the Courts act in a very light hearted fashion, and quite readily assume and presume and proceed on the footing that the couple readily agree in writing that they have lived apart for 1½ years (for the required period) eventhough they have lived apart only for a month or so and effective and adequate opportunities were neither given nor occurred for reconciliation. Specific provision should be made for strict compliance of the conditions and for the genuine satisfaction of the Court.

4. Under the Act of 1976 divorce has become a routine mechanical affair, parties lighteartedly averring separate living. Under the amendment of 1976, separate living for one year coupled with consent memo of both parties was sufficient to grant divorce.

The idea is to improve the situation and dispense with consent memo and made divorce available for either party whether or not the other party consents. This facility which is an improvement, should not be subjected to several conditions, which would make the proposed amendment harsher than existing provision Sec. 13(b) of the Act, 1976.

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The presence of children should be regarded as a very relevant and a crucial factor to be taken into consideration by the court. Indeed in a given case which may be harsh; the Court may be given freedom to refuse divorce.

7. To reiterate the proposed amendment should not/put more obstacles in the way of spouses obtaining divorce and create fresh problems. It should be to reduce the existing rigour under the 1976 Amendment.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 151

[Comments/suggestions received from Shri Aftab Singh Bakshi, Legal Remembrancer and Secretary to Govt., Punjab]

The object of good divorce law is to bring stability in marriages. The fact of the matter is that in the olden days when divorce laws were stringent the number of divorce cases in the courts was almost negligible. Human beings have inherent capacity and ability to adjust themselves to the surrounding circumstances. Where spouses feel that there is absolutely no other alternative available he or she is bound to make adjustment sooner or later with his or her spouse. Total adjustment, of course, would be impossible to achieve and nobody is wholly adjusted in this world but with some give and take on either side after understanding the problems of the other spouse the wheels of matrimonial carriage may eventually start moving in unison. That was what was happening in the days of our forefathers and we come across very few broken marriages in the past.

2. With the introduction of the new legislation which made divorce somewhat easier than before more and more number of spouses have started adopting this easy course. The divorce has been made so easy that the same may be had at the asking by mutual consent. In my view this has done more damage to the family life than anything else because young people at the time of the start of the marriage having come from different family backgrounds are not trying to understand the problems of the other spouse because of their immaturity. They have fixed ideas and principles from which they would not like to budge because of false notions of prestige and honour and also because there is a desire to establish ones domination over the other at the outset of the marriage. My feeling is that the period of one year of separation and non-cohabitation provided in the Act is too short a period of trial of marriage before permitting a mutual divorce. In my opinion this period of separation should be three years before the parties come to the court with a prayer for mutual divorce. This by itself would be deterrent and disincentive to seek a mutual divorce and at least some percentage of men and women would certainly try to make adjustment when they feel that they will have to wait

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for a Court's verdict for atleast four years. And furthermore the mere statement of the parties that they have lived apart should not be accepted as sufficient. They must adduce convincing legal evidence to prove this fact.

3. I am of the view that during this period of three years suggested above both the spouses should jointly obtain marriage and re-conciliation counselling and no application for mutual divorce should be entertained until and unless they produce a certificate from such a reconciliation bureau that they had a minimum of six hours of sittings with the reconciliation bureau at different perious spread over a span of three years. Again after the application has been entertained by the Court, during the period of six months which the statute has fixed for the purpose to make fresh efforts of reconciliation the parties must jointly approach the reconciliation bureau and have another few joint sittings of not less than six hours duration spread over this period of six months and it is only after the counseller gives a certificate of irretrievable break-down of marriage that the court should give its final determination as provided by law.

4. Another suggestion that I would like to make in this connection is that there must be a provision in law requiring the spouses to live and cohabit under the same roof for atleast a period of seven days during this statutory period of six months before they approach the court again for consideration of their application moved six months earlier. It is my experience that a fair percentage of spouses who have stood apart on mere prestige and have not had the occasion of coming physically together and exchanging views dispassionately are bound to come close and reconcile.

5. In any case law should be made very stringent and no mutual divorce should be granted in cases where there is a child out of the wedlock. The parents have no right to bring forth a child and thereafter obtain a divorce by mutual consent and condemn the child to a life of lop-sided development. For proper development a child must have love and affection from both the parents together. The development of a child left with a divorced mother without the guidance and protection of a father would be undesirable. Similarly lack of mother's affection for a child left with the divorced father will not be favourable for a complete and proper development of a child.

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6. The mere words of the spouses before the court that their marriage has broken down irretrievably should not be considered enough by the court to grant a mutual divorce. The spouses must produce some kind of a certificate from a psychiatrist to prove that it is impossible for the parties to adjust together because of some psychological reasons or in case of physical reasons such as impotency or frigidity they must produce a medical certificate to that effect. I must mention here that a good number of mutual divorces are obtained by those couples where either the male is impotent or the female is frigid but they do not want to bring this on the record because they do not want to make it public leaving a scope for the deficient partner to seek another marriage. They do not disclose this fact to the Court and simply make a statement that the marriage has broken irretrievable and because of incompatibility of temperaments it is impossible for them to live together. In this kind of divorce the deficient spouse by keeping his or her deficiency secret can spoil the life of yet another un-warry person who does not know about his/ or a frigid spouse should not be enabled by the provisions of law to seek a mutual divorce on the ground of incompatibility or irretrievable break down of marriage because by this life of yet another person is put in jeopardy.

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b) FAMILY COURT

It will not be practicable nor possible to have exclusive courts of the status of District Courts to try the matrimonial disputes because number of such cases is still not too large to keep a whole-time District Judge fully occupied. It is also a tall order to have lawyer and Judges with particular training in psychiatry, psychology and sociology. I feel that a District Judge after long experience in courts will be sufficiently equipped with the necessary knowledge, of psychiatry, psychology and sociology to deal with these family problems. It can, however, be ensured that the Presiding Officer of the court must himself or herself be married and have a family so as to be able to understand the common family problems because his/her personal experience as family man/woman will be of much help in understanding the problems of others.

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I am in favour of setting up of auxilliary services or conciliation bureaus and family counselling bureaus. Instead of the Presiding Officer of the Court or the lawyers being specially trained in psychiatry, psychology and sociology, the services of these Bureaus can be utilised in the manner suggested by me above.

There need not be any separate Legal Aid Bureau to aid the family courts because already there are legal aid Bureaus meant for such aid. Provision may, however, be made that persons having such matrimonial disputes may be entitled to get free legal aid alongwith the other categories of persons provided for at present.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 152

Comments/suggestions received from All India Women's Conference, Pune Branch (Maharashtra).

The legal committee of the Pune Mahila Mandal, Branch - All India Women's Conference, organised a meeting on 13.3.1982 at Mrs. Yamuna Bhagwat's residence to discuss the proposedinsertion of new section 13-(C), (D) and (E) to the Hindu Marriage Act 1955 and to the Special Marriage Act 1954. Representatives of all major women's organisations in Pune attended. Also some lawyers and retired judges were present.

The proposed amendment was discussed in its legal and social aspects and rejected. Our reasons are set out in details after this. Basically for us marriage is a voluntary contractual arrangement between consenting adults. It is entered into with a view to permanance. Co-habiting and bringing up children are the two major aspects of the marital agreement.

If, for any reason, one or the other aspect comes in danger of not being catorialised, we believe that both spouses have jointly or severally the right to other petition for diverse i.e. termination of the contractrral arrangement.

However, divorce is not a crime. It is a reviewing of an earlier judgement by two people about their ability to get on together. Divorce if wanted by mutual consent should be granted with minimum fucs. The provision of mutual consent divorce is adequate and it may be extended to cover all marriage.

However, when only one spouse wants to discontinue, care must be taken to avoid injustice to the other spouse and to the children. It must be agreed upon as a principle that economic obligations of the earning spouses do not cease with the dissolution of marriage. We oppose the insertion of section 13(C) with all its sub-clauses i.e. 13(C),(1),(2),(3),(4) and (5) to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

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Our reasons -

(1) Irretrievable is very vague term to be so considered only when only one spouse claims divorce and the other is willing to continue the marriage, the grounds must be specifically defined in the interest of fair treatment of both spouses. (2) Three years separation can be achieved very simply in Indian Social condition by the man. He can neglect to shift his residence after being transferred, or in an urban set up, he may genuinely be unable to find accommodation. Or for the purpose of educating the children or caring for the elderly parents, he may leave his wife away from him. Thus while she is unware of his intentions he may be establishing a separate residence. Particularly so in view of the provisions of 13(C) (4) which unable him to visit his wife for brief periods. In fact under these provisions in an extreme case, a man can get his wife pregnant and then leave her.

(3)If on the other hand, it is wife who is seeking a divorce it is well-nigh impossible for a women to find a safe shelter for 3 years where her husband may not come to bother her and violate the means

Only a women with independent economic means and a privileged social background can find it convenient to live alone safely these days. It is a known social fact which seems to have escaped the attention of the legal minds drafting this clause. The proposed provisions are unfair to women. I/We therefore propose that (1) separation of residence is not considered relevant to a divorce. In the present law also this ground should be deleted.

(2) Divorce is made easily available when it is sought by mutual consent. In fact in this respect the six months limit is operative not under the mutual consent divorce is eminently reasonable. We propose that "mutual consent divorces" be obtaining in "All Marriages" regardless of religion, Gasts, etc. This will be an important First Step towards a common civil code.

(3) When divorce is sought by one spouse and contested by the other, marriage counselling may be made mandatory. Such counselling body must have the both men and women on it. Wherever such service are not available, the government should take steps to encourage formation of such voluntary bodies.

(4) All grounds should be specifically listed. The present list may be extended to include incompatibility of temperament.

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(5) There must be an absolute time limit to settle such cases one way or the other. We propose that from the date of application, the decision must not be later than two calendar years.

Inordinate delays only cause hardship to children, other dependent and to the wronged spouse. Rehabilitation also becomes more difficult as delay increases age and causes frustration.

(6) We must realise that divorce is not a crime. Instead, it is a correction of the previous judgement that the two parties of a marriage, contract will get along .For the purpose of law all marriages are supposed to be performed in all sincere of intentions. Therefore, the desire to review the working of a marriage should also be sincere. Hence, not a crime.

(7) All the marriage disputes should be conducted before specially appointed tribunals instead of before regular law courts.

(8) All marriages disputes may be treated in camera to project the dignity of concerned inviduals.

(9) Successors must be present at each trial to see that a fair representation is made on behalf of the traditionally maltreated party i.e. the wife, These assessors may be choosen from an approved list of public men, women locally known to be involved to social work along with their professions.

(10) The custody of the children also should be given on specific consideration. Under Indian Social condition a single parent who has custody faces many difficultiies. For instance, children are not admissible in working women's hostels. Also re-marriage is easier if a woman is without the burden of looking after her children. This is sad but true. Therefore the court must have the right to award the custody to the paternal or maternal grand-parents and give visiting rights to both parents. Mainteinance for them may be collected from the earning spouses.

(11) The issue of custody and legal guardianship needs to be re-examined. Children must not be made innocent victims of marital dischord and economic wrangling subsequent to it.

(12) Let me now turn to 13(D) and (E). Our previous comments deal with it partialy But specifically we wish to point out that non-earning wife finds it very hard to travel back and forth for the hearings.

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Therefore, all divorce hearings be conducted in the nearest tribunal to the residence of the women. This can be changed to any other location throughout the country if a petition to that effect is signed by and submitted jointly by the spouses.

(13) For children over five years, in awarding custody, the wish of the child also be ascertained through the expert services of counsellors. In no case the child should be handed over unwillingly to anyone. If the child has no preference then only the decision be left to the court subject to the well-defined grounds.

(14) Children under five years should not be separated from their mother unless she is in extreme poverty or has a dangerous communicable disease or is insane.

(15) Section 13(D) (I) is very vaguely formed. It almost encourages litigation and provides scope for the contesting skill of the lawyers and the ideosyneraces of the judge. Although marriage is a contract. Its human angle must never be lost sight of. It is no on par with a business contract. The formation of 13(D) ignores this fact. It has been based on vague like "hardship" giving a lot of free reign to legal heir spliting.

(16) About section 13(E),, we have already said something earlier but on grounds of equality of men and women we submit that 13(E) (b) be removed. Unmarried or widowed women if they are over 18 (eighteen) years are not to be treated as dependent children. This only encourages the secondary status of women.

In short,

We reject 13 (C), (1), (2),(3),(4) and (5),

We claim reformulation of 13 (d) and to think of hardship over of the place of litigation.

We reject 13(E) (b), But we appreciate the concern for the welfare of children.

We demand -

Separate marriage dispute tribunals and assessors to deal with divorce petitions and custody petition on a speedy basis.

We further demand -

that maintenance arrangements be tigthened up. If maintenance is decreased and not paid within three months, the salary or other income should be directly attached and paid through the legal authorities to the beneficiaries (spouse and dependent and children). At present defaulters escape punishement. Permanent lump sum settlement in lieu or monthly payments should be preferred wherever possible.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 153

[Comments/suggestions received from Shrimati Hemalata Heqishte, Vice President, Jyoti Sangh, Ahmedabad.]

Additional submissions before the Joint Committee of the Marriage Laws (Amendment) Bill, 1981, made on behalf of Jyoti Sangh, Ahmedabad.

We take this opportunity to invite the attention of the Joint Committee to a difficult legal situation that at times arises under the Hindu Marriage Act, 1955. As the preamble of that Act declares, it is an Act to amend and codify the law relating to 'marriage among Hindus'. It is, therefore, clear that the dominant theme or nucleus of that law is a 'Hindu Marriage' or a marriage that takes place between any two Hindus, irrespective of the place or country where they live or reside. All the provisions of that law are, therefore, meant to subserve the above dominant object and to provide rights and remedies for the protection and amelioration of the two spouses who are marriage under that law.

We, however, feel that a part of the provisions contained in Sub-section (2) of Section 1 of the above Act does not appear to be consistant with the dominant or principal object of that law as noted above. In the first place, Section 1(2) extends the said Act to the whole of India except the State of Jammu and Kashmir. But Section 1(2), in substance, states further that the Act also applies to Hindus 'Domiciled' in India even though they are or reside outside the territories of India. In other words, the legal effect of Section 1(2) is to exclude those Hindus from the purview or applicability of the said Act, who are not 'domiciled' within the territories of India or those who are 'domiciled' outside the Indian territories.

The most unfortunate result of the above exclusion of Hindus domiciled out of India, is that even though

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both spouses are parties to a Hindu Marriage which would fulfil or satisfy all the statutory preconditions for the performance of a Hindu marriage as prescribed, inter alia, by Sections 5 and 7 of the said Act, an aggrieved spouse so married, is denied recourse to any of the remedies of restitution of conjugal rights, judicial separation, divorce, etc., prescribed by sections 9 to 13-B (including the proposed Section 13-C) of that Act against the guilty or defaulting spouse, in any Court referred to in Section 19 of the said Act, just because of an extraneous or irrelevant fact that one of the two spouses happens to have a domicile or permanent home out of India.

The effect of Section 1(2), therefore, is to confine or restrict the operation and enforcement of the beneficial or corrective remedies provided by that law to only those Hindus who are domiciled in India and to deny the same remedies to those Hindus who have gone out of India to live permanently in a foreign country.

We are of the view that any such division or discrimination simply based on geography, which is sought to be made by section 1(2) between Hindus of Indian domicile and Hindus of foreign or non-Indian domicile, does not appear to have any reasonable nexus with the salutary object of improving the lot of Hindu spouses in general and Hindu wives in particular, which the said Act is undoubtedly enacted to achieve. On the contrary, we feel that the above distinction is unhealthy or vicious and operates as an avoidable hurdle or nuisance which defeats the very purpose or object with which the said Act was passed.

During the last two decades, hundereds of Hindus have migrated to America, United Kingdom, Middle East Countries, Africa, etc., and have made those countries their permanent homes, with no intention to return to India as their mother-land. In other words, such Hindus are 'domiciled' out of the Indian territories. But many of them visit India in search of suitable Hindu brides; advertise their position, wealth and their qualifications in the Indian newspapers and canvass for their candidature as prospective bridegrooms for a Hindu marriage. Many a Hindu bride or her over-ambitious parents get lured into such marriage proposals and hurry to grasp, in pride, the hand of a 'foreign-based' Hindu groom in marriage, without ever inquiring into the antecedents of the boy concerned or his family background or culture.

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We are aware of several such marriages having soon crashed on the rock of reality when the hard facts come to light and when the hopeful bride and her parents find themselves duped by the 'foreign' bridegroom's total misrepresentation of facts. But at that time it is too late for them to make amends for their follies because the boy being 'domiciled' out of India, is given the protection of law by the said Section 1 (2) and, therefore, he can easily non-suit his miserable wife, in limine, by successfully raising the bar of jurisdiction against an Indian Court trying to help the miserable wife.

We, therefore, pray that the law enacted in Section 1(2) deserves to be suitably amended to rescue innocent wives of such marriages, by extending its jurisdiction to Indian Courts by applying the relevant provisions of the said Act, also to Hindus who are domiciled out of India.

If Section 1(2) makes the said Act applicable to a Hindu domiciled in India, though temporarily residing abroad, then we see no valid reason to exclude a Hindu from the operation of the same law, merely because he has chosen to permanently reside abroad.

We, therefore, earnestly hope and trust that this committee will consider our above representation and help miserable Hindu spouses - wives - to wriggle out of the above legal impasse.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 154

[Comments/suggestions received from Chairman, State Social Welfare Advisory Board, Simla (H.P.).]

The grounds on which the marriage is to be considered "Irretrievably Brokendown" should be clearly defined and not left to the discretion of the court or the parties concerned.

In our opinion the divorce should be liberalised but not so liberal as to prompt the parties to go for divorce on trifling and petty matters without exercising efforts/restraint for reconcilation and adjustments. A few salient points that we wish to put before the Committee are summarised below:

1. The time of separation may be reduced to one year.

2. After the children are born out of the wedlock divorce on the grounds of irretrievably breakdown of marriage should not be allowed. However, divorce may be granted in such cases on other reasons already defined in the Hindu Marriage Act, 1955 and Special Marriage Act, 1954.

3. Non-consumation of marriage for one year may be included as one of the ground for irretrievable breakdown of marriage.

4. Divorce may not be granted if opposed by a wife on the ground of financial hardship till her maintenance is assured.

5. With the passing of decree for divorce the husband/wife should have a share in the property acquired by the spouse after the marriage and upto the date of living together.

6. The provision should be made in the law which should provide for financial security to wife and children for the period during which the spouse is living apart.

7. Mere fact of living apart of the spouses should not be the reason for irretrievably breakdown of marriage.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 155

[Comments/suggestions received from Mrs. Lajjaya Raghubir Singh, General Secretary, Himachal Pradesh Janta Party, Simla.]

This is to confirm that statement pertaining to my views mentioned therein are correct. Additions and clarity in view sought are added for kind consideration:

1. Basic Fraudulent selfish motives of cheating by arranging marriage either party to assure permanent financial prospect of luxurious living at the cost of the other not only for the person married but also the family members of that person (Life Partner).

2. Family Courts of Elders including social workers of high standing, integrity and intellegence in its composition are of permanent importance over legal courts since the whole problem needs Humanitarian approach rather than legal... Since in Divorce so many lives including fate of children and also sentiments (Religious-social-family unit) of elders are seriously involved.

3. When irretrievable breakdown (Point of no return) is confirmed by all conceivable angles - than there is no reason for the long period of three years (which is literally animated suspension of the sealed fate) that would result into constant mental and physical agony and torture for the grieved party.

4. Children should be in custody of the father or mother whosoever can assure of better upbringing of the child/children in mental, physical and spiritual sphere, i.e. ideal family atmosphere. Debauch and drunkard father, though rich, do not increase his eligibility to assure better future for his minor children - whereas bad character woman's mother company is by no means a healthy environment and companion for a minor child.

5. Where there is fraudulent motive behind in marrying to assure permanent prospect of financial security On divorce should not entitle such a party any rights over the property of the grieved party.

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6. The Marriage Laws (Amendments) would be of tremendous benefit and impact over the crualities of old Reets still prevalent in certain parts of Himachal Pradesh thus according self-dignity to the woman and thus assuring her, her rightful place in Indian Society - in decision of her own personal fate.

Synopsis on views on Divorce dated 7.10.82 is also attached which was sent to Janta Party (H.Q.), New Delhi.

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Synopsis of views on Divorce

While considering, the legislation relating to Divorce, under the Hindu Marriage Act, 1955, as amended from time/time, it must be seriously, constructively and dispassionately considered, that there is an immediate and inherent/requirement to legislate a very easily obtainable divorce, composite, comprehensive and detailed enough, so as to incorporate two twin questions, of (a) Maintainance of the spouses and in regard to minor children.

(b) the matter in regard to custody of the children.

Though there are various provisions in regard to maintenance and custody of the children, in law, which are already available, but their mention in the decree of divorce should be conducive to prompt disposal of all matters pertinent to this grave problem. It must also be understood that Section 29 of the Hindu Marriage Act, 1955 already recognises the validity of the customary Divorce which covers the vast Hindu population of India, including Himachal Pradesh and this of marriage through customery Divorce is already available at very short notice and is non-expansive. In such cases, the disparity of temperament and inability of the parties irrespective of reasons, used for dotting the "is" and dishing the "T's" are accepted and formalities dispensed with, that immediate verbal or written divorce signed by parties and by two witnesses has the finality and validity and thereafter leaving the parties free to remarry. The minor children are taken by the woman and the part or total amount as decided is paid by one or the other of the spouses and thus the whole matter is finalised. Therefore I am of the opinion that this principle of easy and immediate divorce should be accepted, as the basis for this legislation, as it has the wisdom and work ability of the centuries behind it and does not carry the hangover or the stigma or fallouts of hatred's, animosities; family feuds; protracted litigation; marital breakdown; discord and division; infliction of continued laceration of body and mind; murder, suicide; death by poision death by cynide and strychaine, or death by an assasin's knife or by disfiguration of face by use of acid and other corrosive substances or resulting in wide and rampant extra marital sex and friendship agreements or seeking protection in conversion to another religion.

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This law of easy divorce is only applicable to a very small percentage of educated and best brains of the society. Therefore, rather than make our best fraction of population miserable, or to practise self-righteousness at their expense, by making them diseased, and pathological cases, resulting in the complete breakdown of their personality and permeating and over-loading their psyche with consciousness of guilt, it is much fair , practical and human concept not to bind the unwilling partners together in contractual matrimony through compulsions of every conceivable nature. It must be recognised that a tremendous social change has taken place and there is no point making a law which is disobeyed totally and remains on the statute book and the sordid orthodoxy is sought to be perpetuated irrespective of the realities of the over-ripe situation for an easily and immediate executable divorce. It is no point waiting for some further great catastrophy before this social legislation is brought forth. If other religions with very easy divorce have not only been expanded and have very cordial and happy family life, and if Hindu Customery law has given solace to millions, there is no reason for stalling this human legislation. It must be passed immediately.

"Inability to stay together" irrespective of the reasons or ethics must also be included as an immediate ground for divorce. An application for divorce should be accepted as a prima facie proof of inability to stay together. And unless it is withdrawn, at the first hearing the divorce proceedings must follow immediately and the same (Divorce) must be granted within a period of six months. If the parties reconcile at some future date, they can re-marry by taking another seven steps or under the customary law.

In short the irretrievable breakdown as well as inability to stay together must result in immediate divorce for the reasons stated in detail above.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 156

[Comments/suggestions received from the Citizen Action, New Delhi.]

Provided that no decree for divorce shall be passed under this Section whenever it is found from the evidence recorded that the petitioner has lived apart from the respondent with a view to prepare a ground for divorce under this Section without any reasonable cause.

Provided also that when a decree for divorce is passed under this Section on a petition filed by a husband, notwithstanding anything contrary in the Guardian and Wards Act or any other provision of law, the wife shall be entitled to the custody of minor children borne out of the wedlock sought to be dissolved, unless the court finds that looking to the facts and the circumstances of the case it would not be in the interest of the concerned minor that his or her custody should be kept with the wife. The divorced wife shall, however, not be entitled to any such privilege if she remarries.

Whenever the custody of a minor child is allowed to be kept with the wife under this Section, the court shall require the husband to provide for the maintenance, education and marriage of such a child till he or she attains the age of majority.

In an application under this Section if the court finds that a case is made out for passing a decree for divorce on the ground of irretrievable breakdown of the marriage, the court, instead of passing a decree absolute, shall pass a decree nici, and shall thereafter, refer the matter to 'Family Counselling Agency' for bringing about a reconciliation between the husband and the wife concerned.

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Within six months of such reference by the court the 'Family Counselling Agency' shall submit its report to the court.

On perusal of that report the court may either make the decree absolute, or may pass any other order as found just and reasonable in the circumstances of the case.

If for any reason, the 'Family Counselling Agency' does not submit its report within the time mentioned above, or within the time as extended by the court as herein provided, the court shall proceed to draw the decree absolute as between the parties.

On sufficient reasons being provided, the court may extend the time for the submission of the report of the 'Family Counselling Agency' by not more than fifteen days in all.

For the purpose of this Section, 'Family Counselling Agency' means a panel of not more than three persons one of whom may preferably /b+ /a lady who is /socially oriented and /appointed by the court after consulting the parties or their advocates in the petition before it.

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(312)

(7)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 157

[Comments/suggestions received from Shrimati Vani Jethmalani on behalf of Mahila Dakshita Samity, New Delhi]

1. The Bill is not a pro-woman's Bill. It seeks to make unilateral divorce "Talaq" available on demand and gives no compelling reasons why the provisions of Muslim Personal Law (Modified) should be transplanted into the provisions of Hindu Personal Law. The Statement of Objects and Reasons given in the Bill makes a reference to a "demand from various quarters" for introducing the provisions of irretrievable breakdown of marriage into the Hindu Marriage Act. The statement however does not clarify what are those "quarters". One can therefore only assume that those quarters must be the articulate 10% elite women and men who wish to impose their life-styles on the remaining 90% of the still traditonal women in this country who look upon marriage with expectations of permanence and one guaranteeing total security. The Statement of Objects and Reasons expects woman to believe the assurances that 'various aspects of the matter' were considered before the bill was framed particularly as the framers of the bill have not given any indication of any scientific survey or opinion poll amongst those women, who are likely to be affected by its provisions. In the absence of such a survey the claims by the authors of the bill seem highly suspici us

The so called "safe guards" contained in the Bill can hardly compensate the vast majority of women for over-night betraying their expectations about the durability of the institution of marriage. The Bill lends support to the current male dominated thesis that women are willing to barter away their emotional security, dignity and self-respect for some financial compensation. The safe-guards can at best only be considered to be crumbs thrown to women in return for changes which they can hardly comprehend.

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There is no objection to the manner in which the Bill has been drafted. There is serious objection to its timing and the necessity for introducing it at this stage in the socio-economic development of the women in this country. The need for easy divorce can hardly be treated as a compelling socio-economic priority in a social welfare state which has yet to provide social security and avenues of employment to every person in this country. In this context preserving the other grounds of divorce under section 13 of the Hindu Marriage Act and Section 28A of the Special Marriage Act can only be termed as an eye-wash since it will make the other grounds of divorce in that section totally redundant.

There is no rationale for introducing irretrievable breakdown of marriage in the Hindu Marriage Act as the Statement of Objects and Reasons suggests. The Bill is presumptuous and misleading in making that claim particularly as it seeks to transplant on Indian culture a western concept which is both premature and ill-conceived. It fails to take into account that in countries as in England where divorce is frequent, irretrievable breakdown of marriage was necessary to preserve whatever sentiment remained between parting and estranged spouses. That situation does not exist in India particularly since the prevailing social attitude among Hindu wives is one which reveres and respects marriage as a sacrament. The bill will only accelerate divorce and will place the cart before the horse.

Without the introduction of genuine safe-guards such as "community of property" namely division of joint assets and income earned and owned by both the parties after the marriage, the bill cannot mitigate the financial hardship of women. The oppression of women cannot be alleviated unless there is a sustained effort to educate women about alternatives and goals other than marriage. In a society where there is genuine equality between men and women and the necessary infrastructure has been created making jobs accessible to women and the social conditions have been created to absorb divorced women in society - the bill may have been more acceptable to Hindu women. Perhaps though we hope not - if the government still wants to pass this bill- we hope the experiment will be confined to the Special Marriage Act before it is extended to the personal laws of other communities.

CONFIDENTIAL (9)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 158

[Comments/suggestions received from Smt. Roda Mistry, President, Indian Council of Social Welfare, 21-Ashoka Road, New Delhi.]

The Bill seeks to amend the Marriage Laws specially with reference to divorce, irretrievable breakdown of marriage, restriction on decree of divorce, wife's right to oppose divorce and allied topics.

However, we may point out that the very basic concept of marriage is overlooked, especially with regard to the proof of a marriage solemnized. Frequently one comes across cases where the husband, like Kind Dushyanta of Kalidas' drama Shakuntalam denies the fact of marriage, disown the status of the girl as a wife and discards his legal obligations as a husband. In such cases, it is difficult to tender proof of marriage.

One of the remedies we suggest is to enact a law, making registration of every marriage a compulsory obligation, on pain of punishment in case of defaults to register.

We may point out that an All India Legislation on the lines of the Bombay Registration of Marriages Act V of 1954 may be passed, making every marriage solemnized in India compulsorily registrable.

Failure to register need not invalidate the marriage (see 7 of the Bombay Act). But imprisonment may be provided for failure to register within 30 days of marriage. In a village the Patil of the village may be empowered to keep the register of marriage or the Panchayats may do this work.

Name and address of the officiating priest, if any, may also be recorded.

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(1) (315)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 159

[Comments/suggestions received from the President, Bharatiya Mahila Federation, Bombay Committee, Bombay.]

RECOMMENDATIONS TO THE MARRIAGE LAWS AMENDMENT BILL, 1981.

Under the law as it stands today, dissolution of marriage by divorce can be obtained on the following grounds:-

1. Mental disorder or unsoundness of mind,
2. Veneral disease
3. Virulent leprosy
4. Renouncing the world
5. Conversion to another Religion
6. Missing for 7 years or more
7. Desertion for more than two years
8. Treatment with cruelty
9. Voluntary sexual intercourse with another person. A wife can also have a divorce on the additional grounds
10. Husband being guilty of rape, sodomy or bestiality
11. Husband having a second wife alive.

Also by consent of both the parties, a divorce can be obtained. The scope of divorce is now sought to be further widened by adding a new ground, namely, 'irretrievable breakdown of marriage'.

Irretrievable breakdown has not been defined in the proposed amendment. The abovementioned eleven grounds are really grounds which establish irretrievable breakdown and hence in a way irretrievable breakdown is already a ground of divorce. It would, therefore, be meaningless to propose irretrievable breakdown by itself as a new ground. The new and additional grounds assumed must be expressly stated. Otherwise confusion and mischief is likely to result.

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The sponsers of the Bill are conscious of this basic lacuna (defect), but instead of proposing the definition or the grounds they have in mind, they have asked for suggestions for a definition.

Sec. 13 (IV) (2) does not give a definition, it only lays down a condition precedent namely 'living apart for three years or more." The divorce can be refused even if this condition is fulfilled, if on evidence it is satisfied that marriage has not broken down irretrievably. This means that there must be evidence as regards the factors leading to breakdown. However it is necessary that this should be expressly stated in the Bill to remove doubts, and as stated above it is necessary to enumerate these factors or gounds.

Grounds which can be suggested in addition to the abovementioned eleven grounds, can be as follows:-

A. Where the husband is indulging in anti-national, anti-social and criminal activities involving moral terpitude for instance smuggling, spying etc.

B. Where the husband has become an irretrievable addict to heavy drinking, or consuming narcotics or dangerous drugs and has become a burden or danger to the wife or children and lost his earning capacity.

TO SUM UP

1. 'Irretrievable breakdown' should not be added as a ground unless it is defined and the grounds of irretrievable breakdown mentioned in the definition.

2. We can mention the above-mentioned grounds A and B for being included in the definition.

3. Any other grounds if suggested by sponsors will have to be examined carefully from the point of view of the wife's interest.

4. If it is the wife who is applying for divorce, the period of living apart may be reduced to one year instead of three years.

5. The grave financial hardship referred to in 13D and (2) should include hardship of accommodation also.

6. Provision should be made to make sure that if the husband is responsible for forcing the breakdown, the divorce should not be granted when opposed by the wife.

7. Nonconsumation may be included as a ground.

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(3) (317)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 160

[Comments/suggestions received from Shri V.D. Joglekar, Advocate, 229 Sadashiv Peth, Pune-30.]

1) I do not understand why our Indian Parliament is so liberal in introducing any new ground for dissolution of marriage for Hindus and those marry under Special Marriage Act of 1954.

2) Both these acts were extensively amended by amending Act, 1976, Act No. 68 of 1976.

3) If the proposed ground for divorce is added in the Acts, then many other provisions in the Act will become redundant e.g. (1) Sec. 13(ib) of the Hindu Act and Sec. 27(b) of the Special Act provides for divorce after two years desertion. (2) Sec. 13 B of the Hindu Act and Sec. 28 of the Special Act provide for divorce by mutual consent if parties to the marriage are living separately for a period of one year or more.

4) If parties to the marriage get ground for divorce only after separation of one year or two years separation by desertion then this new proposed ground, which will ripe after three years separation will of no use. No parties will avail themselves of this ground. And thus there is no point in amending the act as proposed.

5) As per my belief similar ground was introduced in the Matrimonial cause Act in England some where in 1971 or there about, and our Law Commission has a habit of copying these amendments. We should try to frame our Laws as per the views and necessity of our Society and before amending we must see whether there are already similar provision in the existing Law.

Sec. 125 of Cr. Procedure Code provides for maintenance of divorced wife and children. Provisions proposed in Sec. 13 E are mere duplication and hence they are not necessary.

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(318) 4.

Sec. 28 of the Hindu Marriage Act and Sec. 39 of the Spl. Marriage Act as they now stand after amendment by Act no. 68 of 1976 do not provide for appeal against the order of Maintenance pendente lite and expenses of proceedings under Sec. 24 of the Hindu Marriage Act and Sec. 36 of the Spl. Marriage Act.

This amendment has caused much hardship to the husbands, as they have to approach High Court under revisional powers or constitutional remedy, and going to High Court is more expensive.

To remove this inconvenience and hardship following explanation to above sections may be added.

EXPLANATION: Orders for maintenance pendente lite and expenses of proceedings are not interim orders if they are made after giving opportunity of being heard to both sides.

The Indian Parliament which is so liberal to add any new ground for divorce in the Hindu Marriage Act and the Special Marriage Act is absolutely miser in even giving legitimate grounds for Indian Christians.

Sec. 10 of the Indian Divorce Act ennumerates grounds for divorce for husband and wife. Mere reading of the Section shows that it is partial towards husband who can get divorce only on the ground of wife's adultery, But if the wife wants divorce from her husband she has to allege and prove that he -

1) has changed his profession & gone through a form of marriage with another woman, or

2) has been guilty of incestuous adultery; or

3) of bigamy with adultery; or

4) of marriage with another woman with adultery; or

5) of rape, sodomy or bestality; or

6) of adultery coupled with cruelty; or

7) of adultery coupled with desertion for two years.

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This shows that only adultery of the husband is not the ground for dissolution of marriage. That is a Christian husband may lead adulterous life and his wife will not be able to get divorce from her.

In case Hindu spouse under Special Marriage if he has voluntary sexual intercourse with any other person other spouse get right to get divorce.

Similarly, desertion, cruelty, change of religion, infection from venereal disease, or leprosy are by itself are ground for divorce under Hindu Marriage Act and Special Marriage Act.

If those grounds are available to Hindus and persons married under Spl. Marriage Act, why not make these grounds available to Indian Christians by making suitable amendment in the Indian Divorce Act, 1869.

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CONFIDENTIAL (6)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 161

[Comments/suggestions received from Shri Jayvaden R. Shah, Advocate, Mirzapur Road, Ahmedabad-1.]

The proposed amendment of the Marriage Laws Bill, 1981, no doubt will be a fatal blow on Hindu Sanskriti, but with the modern age, and more particularly effected by Western countries dire demand of the Society, needs us to provide such provision of Divorce to regularise the modern system of life, and I welcome this amendment bill with certain suggestions therein.

Sec.13(C)(2).

(1) Section 13(C)(2) provides for 3 years continuous separate living. In my opinion it will be a long period, Instead of that 2 years continuous separate living be provided, as in the present provisions u/s 13, divorce on the ground of desertion provides for 2 years desertion, under Sec. 13B, divorce by mutual consent provide separate living for one year, and normally about one year is lapsed in the court, after presentation of such petition and when either party comes for divorce with a ground of irritrievable breakdown of marriage, why precious period of life of either spouse is spoiled more. So I propose a period of two years under Section 13(C)(2) of the Amendment Bill, 1981.

Sec. 13(C)(3).

Before granting decree of divorce court must inquire the cause for separate living, any possibility of reconciliation or re-union and then satisfaction for continuous separate living, be sufficient to grant a decree of divorce.

Sec.13(C)(4)(5).

Section 13(C)(4)&(5) be deleted. There shall be continuous separate living for two years and any time living together, would create allegations on each other and will create lot of trouble. Joint living

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during any such period would create the problem of conception of a wife, wife will allege that it is her husband's child and husband will allege that it is not his child. It will be difficult to prove. So any provision for joint living during this period is not all all advisable and so section 13(C)(4) & (5) be deleted.

Sec. 13(D).

In addition to financial hardship of the wife, court may also award marriage expenses to the wife, considering custom and status and the financial position of the husband.

Section 13(E).

In addition to what is provided under section 13(E) the court shall not pass a decree of divorce unless the adequate provision for the maintenance of children is made and in case of a male child till he finishes his education and gets employment, financial arrangement must be made, and in case of a female child /she marries. So the provision of maintenance of a child be made as above and till the court will be satisfied about the same, court shall not pass a decree.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 162

[Comments/suggestions received from Shri Chaula Kuruwa, Naranpura, Ahmedabad.]

India has uniform penal code and common codes for civil and criminal procedure. There is however no uniform personal law. Indian constitution has given equal rights to all the Indian citizens. However separate laws based on various religions and specially different marriage laws often violate the equality guaranteed by the constitution.

For instance any Hindu man can marry more than once by just converting to Islam. The Islam law gives right of having four wives to men only but for women it is restricted to one husband. Specially in intra caste and in intra religious marriages women become the main sufferer in case of disputes.

These separate laws based on separate religions not only violate equal rights guaranteed to women but also disturb unity and harmoney of the nation. Before independence Jains, Sikhs, Buddhas had separate laws too, like Muslim, Christians and Hindus. But after independence all the Sikhs, Hindus and Jains were forced to adapt Hindu Law. While Muslims and Christians continued to have separate laws. This is really unjust to Indian Jains Buddhas and Sikhs as they are from minority religions. On the other hand we should not ask for separate laws for these minority to justify their religious rights as such will divide the country.

Religion is a personal relation between an individual and God. The constitution may give freedom for individuals own religious practices, but the law for marriage, property, guardianship, adoption etc. should be uniformed for all the Indian citizens as they affect the social aspect of human life.

Time has come to think in this direction. The authorities, parliament should quash all the separate laws based on various religions specially for marriage, property etc. and should frame a single uniform law for marriage and family succession for all the citizens of India irrespective of their caste, sect, religion, state, language etc.

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(328) (9)

Proposed 'Indian Marriage Act'
and 'Indian Family Law'

Purpose-Motive -

1. To creat silent social revolution in the Indian society which is suffering from many evils, through this law.

2. To destroy all social evils, like castism, Dowry, humiliation of women in marriage system, unnecessary expenditure in marriage etc.

3. Law for harmoney, integrity, unity and secularism in otherwise hetrogeneous Indian society.

4. To prevent women from unequal provisions made in various religions which ultimately victimse women more. For instance bigamy and polygamy in Islam and other laws use harmful not only to Muslim law but also to all the women of this nation.

5. To give justice to some monority like jain, Buddha, Sikh who do not have separate acts based on their religions like Muslim, Christian Hindu etc.

Hints for the Act -

1. This act will be applicable to all the marriages held in this land - India where both or one of the partner is Indian citizen irrespective of his caste, tribe, religion, language.

2. For the citizens of India no other marriage act will be applicable than this. All the citizens of India of all the castes, religions, tribes, sects will come under this act only.

3. With this act all the other separate acts based on sefaxite religions, Hindu Law, Muslim Marriage Law, Christian etc. become restricted and cease to exist.

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Family Court. 4. Now all the marriages in this land where atleast one of the partner is Indian citizen have to be registered in the "Family Court".

However after that they can perform their own religious ceremoney.

Registration 5. Registration of all these marriages, divorce, maintenance, property, guardianship etc. of all such disputes may be dealt in a separate court named "Indian Family Court" which has a term of period and voluntary members.

Dowry 6. This act will ban dowry system strongly and make the provision of serve punishment for it.

Marriage Expenditure 7. The act will impose ceiling on marriage expenditure.

Rs. 500/- for marriage expenditure and Rs. 5000/- for the exchange of personal belongings as a gift from both the side. No gift more than Rs. 100/- be given in the marriage. In no circumstances gold (ornaments) of more than 5 Tola be exchanged.

(However tax provision above this limit can be made to.)

Serve punishment will be made in breach of these acts.

8. Provision for relaxation in 'ceiling' and 'tax' may be given upto certain limit in case of intercaste, inter-religions, inter-state etc. marriages to encourage such system in the society.

Divorce 9. 'Family Court' will deal with all the divorce and maintenance cases and will in first stage try to make compromise. If it does not work out it will dispose the case by issuing appropriate order of divorce etc. with one month. No case should take more than six months.

This act for divorce will be uniform for all the citizens of India and in no other way divorce be granted.

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10. Monogamy - With this act polygamy or biogamy are totally banned in India irrespective of their religion, caste, tribe, sect etc. All the Indian citizens should have one wife or one husband only. Even he/she tries to make second wife outside this land he/she is liable for punishment or he/she ceases to be Indian citizen and looses stay permit in India. No provision for Maitrikarar or 'Mistress' be made in the law.

11. Guardianship - Under the single law of guardianship for all the Indian citizens 'Mother' becomes the natural Guardian of the child upto the age of 18 or 21. Father gets the second right of guardianship. This will reduce the rate of divorce even if the law liberalised.

Marriage Age

12. Marriage age to be increased in this act upto 25 or upto 21 for girls and 25 for boys. (This will help in controling population as well as immature age's disputes in marriages).

13. Not only marriage law to be uniformed but also property law, guardianship and minority law, maintenance law etc. all will be uniformed and all the present such family and succession acts based on Hindu, Muslim etc. religions will become invalid. Only Indian Family Law will consider all personal and family matters through a separate court on socialistic, secular and humanity base.

Present Hindu Marriage Law - 76 Act - 55
Last amendment - 78

<u>Proposed changes</u> -

1. Article - 5 (IV) should be

As it shows the element of customs "Unless protected by legal umbrella of custom it is void and also penal". We need to destroy all evil customs of our society and hence Law should not be allowed to use as per the 'customs'.

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2. Article - 13 (ii) should be caused. Here often men converts to Islam and marry twice. It is necessary to protect "Hindu" women, the provision of bigamy and polygamy made in various acts in India should be quashed and banned.

3. Article - 13(X) Shows caste element in the act and should be quashed.

4. Article - 15 - To be quashed totally - Delay is already done in marriage so to ask to 'vast' again after divorce will spoil the life of both of them more and specially of women.

So unless at the time of granting divorce one of them asked for 'stay' on the order and express desires for challanging the order further both of them may be allowed to marry again very next day.

5. Section 14 - The period to be reduced to one month from one year. Early divorce immediately after marriage helps women in marrying again. It also reduces 'tension and mental disturbances in both of them.

6. Section 13-B - Divorce by mutual consent - Here too for the same above reasons period to be reduced from six months to one month which seems to be enough time for thinking.

7. Generally all divorce petitions may be considered within one month of time of filing them instead of six months. An latest by six months they must be disposed.

Those who are already 'disturbed' and 'under tension' may not be harrassed more by law through unnecessary delay. To stop spoiling their life more Law should be made to speedy and should dispose such cases within six months so that they can start new life.

However 'Family Court' who is trying all such cases can try for once for compromise but should not be made further and often delay once it does not work out and dispose the case by granting divorce immediately.

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(327) (13)

8. Article - 17(2) (Punishment for biogamy) should be quashed. Due to Muslim and other laws here Hindu men can leave this religion and marry again. It is necessary to ban bigamy and polygamy in India under all the religions.

9. Article-26 - Custody of children. This is dependent on 'Hindu minority and Guardians Act-56'

This law need to be changed. Mother should be made natural Guardian of the child till he is minor (upto 18 or 21 years) instead of of father.

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(111) 328

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 163

[Comments/suggestions received from Rotary International, Udaipur.]

Marriages evolved rather late in the process of Social Evolution Planning, Population Control and biological urge for social survival popularized marriage. And it has now become one of the most ancient institutions.

Jawaharlal Nehru called it the most ancient yet ever new path for the men and women newly wedlocked. He said so while thanking numerous well wishers who had congratulated Indira Priya darshini at her wedding in the spring of 1942.

Marriage is a union of two souls, two families for the furtherance of society.

In India we have opted for and adopted seculiarism and democracy. We want National, cultural, social and emotional integration. Our growth must be well planned. Why then there should be one Act for this group and one for that sect?

Why should there be a separate act for Hindus and another one for the Muslims and a third for Sikhs and so on for the other denominations.

We are one nation. We stand and struggle like one man. We have common problems. We have to go forward like one man.

We must give up this sectarian approach. Marriage is a social function and not a religious one. Therefore, there should be only one Act. Indian Marriage Act, that should safeguard the joy, happiness and interest of the man, woman, their children and the whole society and the Nation may the whole humanity.

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(15) (329)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 164

[Comments/suggestions received from Shri T.K. Tope, President, Bombay Social Reform Association, Bombay.]

The proposed amendment to the Hindi Marriage Act with a view to providing for a divorce on the ground of irretrievable breakdown of marriage is a right step in the direction of amending the matrimonial laws of the Hindus. Adequate safeguards have been provided with a view to ensuring that the provision is not misused and the interests of the wife and the children are protected. It appears that men would find it extremely difficult to secure a divorce under the new provisions. On the other hand, for a woman who has been living apart for a continuous period of not less than three years, it would be easy to get a divorce under these provisions. In the present man-dominated Hindu society, this is a salutary measure. Hence the Bombay Social Reform Association supports this measure.

The Association, however, fails to understand why provision is not made for establishment of Family Courts for deciding cases under matrimonial laws. Establishment of such courts would not only facilitate early disposal of matrimonial cases but would also reduce the arrears in District Courts. Hence the Association strongly recommends early establishments of Family Courts for matrimonial causes.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 165

[Comments/suggestions received from Shri D.R. Bhatt, Legal Advisor to Self Employed Women Association, "SEWA", Ahmedabad.]

Proposed bill is a remarkable introduction in Sec. 13 of Hindu Marriage Act by which marriage has been broken down irretrievably has been made a ground for divorce. Looking to the present circumstances such an amendment is not only necessary but it is a must, though by virtue of amendment in Sec. 13 (ib) desertion has been made a ground for divorce, this is not sufficient according to my humble experience at the Bar, more particularly in metrimonials more dispute in this regard are coming from middle class lower middle class or labour class of the society. In many of the cases differences between the spouses arises on account of financial condition keeping this aspect in mind, I feel that insertion of Sec. 13D (i.e. a right given to the wife to defend a petition under Sec. 13C on the ground that she will suffer grave financial hardship) giving power to the Court to dismiss petition on being satisfied about the defence of the wife, would according to me frustrate the very object of inserting Sec. 13C. As stated earlier, since financial aspect is one of the ground on which many of the Marriages are being broken down, to give such a defence in the Statute would defeat the very purpose of introducing proposed amendment in Sec. 13 (i.e. Sec. 13C).

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(331) (17)

Provision with regard to maintenance of the children to be inserted by virtue of adding Clause 13E, fills the lacuna in Hindu Marriage Act and is highly appreciable. Neither Sec. 24 nor Sec. 25 provides anything for the maintenance of the Children. Hence insertion of Sec. 13E is a must.

If wife is in financial hardship and court having been satisfied about this, powers to dismiss the petition will not be in any way beneficial to the wife. On the countrary the position of the wife prevailing richt from the institution of the proceeding till the same is finally decided would remain the same. Another aspect which is requiredto be considered is about carrying the proceeding by way of an appeal in higher forum against such dismissal. Instead of giving such a statutory defence, to the wife who is having financially hardship, a provision can be made by giving power to the Court to make to pass appropriate order on the application of the wife filed by her, immediately on the receipt of the summons of the petition filed under Sec. 13C. If the wife is in financial hardship, then under Sec. 24 of the Hindu Marriage Act, she can apply for interim alimony. In this circumstances either in Sec. 24 of the said Act suitable - amendment be made or Sec. 13B may be remoulded as follows:-

On receipt of the summons of petition under Sec. 13C, wife may apply to the Court that she is suffering grave financial hardship and after considering all circumstances Court may pass an order directing the husband to deposit a reasonable amount within a particular period, failing which proceeding initiated by the husband shall be dismissed with the cost.

If such a provision is made it will serve the purpose of introducing Sec. 13C, rather than to frustrate the same. Moreover looking to language of proposed Sec. 13D, power to dismiss the petition after recording the evidence would unnecessary resulting vesting valuable time of not only the Honourable Court, but it would cause undue harassment to both the parties. One more aspect which is required to considered at this juncture is the existing provision of Sec. 24 and 25 which gives power to the Honourable Court to grant interim alimony and permanent alimony.

Thus looking to the entire Scheme of the Act if wife, who is financially weak and who is to suffer hardship is to be protected, then she should be given such a right and that too at the earliest opportunity and that is according to me on receipt of the summons of the petition under Sec. 13C. This will serve the purpose which is sought to be achieved by inserting Sec. 13D (I do not agree with the manner in which Sec. 13D has been drafted, but my suggestion is as indicated above).

CONFIDENTIAL (18) (332)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 166

[Comments/suggestions received from Shri Kishore Saint, Chief Executive, Seva Mandir, Udaipur, Rajasthan.]

A. General views about the Hindu Marriage Act, 1955.

1. A Consolidated Marriage Act for all in India.

There is a strong feeling among all at Seva Mandir that the country must have, as soon as possible, a consolidated Marriage Act that applies uniformly to all communities regardless of religion, caste or creed, residing within the Indian Union. Marriage might have been performed by any religious rite suitable to the marrying parties. Nevertheless all legal aspects regarding marriages and divorces should be governed by a single Marriage Act that may be evolved considering the general social and economic patterns within Indian societies.

2. Compulsory Registration of Marriage.

Compulsory registration of marriage must be made a requirement by law. Further with every marriage registration the parents or a couple of other close relatives of both marrying parties should be required to present affidavits re: (a) the age of the spouses at marriage; and (b) the fact that no dowry was demanded or given during marriage.

B. Discussion and general opinion on whether "irretrievable breakdown of marriage" should be made a valid ground for divorce.

1. Social perspective of the issue -

(i) Existing position of women in Hindu society.

(a) Lack of enough independence with regard to work outside the home and the income from that source; (b) Stigma against divorcee women;

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(c) Parents hesitant to morally and financially support divorced daughters as Hindus feel that once married the daughter no more belongs to the parental home and her rightful place is with her husband; (d) Great difficulty (near impossibility) remarriage of divorced women as against divorced men.

The above situation of women in our society should be kept in mind when affecting changes in any Marriage Act especially the sub-section on divorce. Divorce affects women and children more harshly than men.

(ii) Phenomena of Divorce

(a) The provision for divorce by law must be comprehensive yet not over liberalized such that the law may be misused by relatives and parents of spouses for their vested interests or by spouses themselves (especially the men for dowry); (b) The procedures for obtaining divorce must be simplified. However, the grounds for divorce be thoroughly studied through all legal and social channels possible;

2. Irretrievability of marriage as a ground for divorce.

This ground is acceptable to the undersigned. However this being a very broad based term allowing innumerable interpretations prone to being misused, the law must ensure strict safeguards.

(i) Prior to adding this ground it is necessary to incorporate in the existing law more specific grounds such as demand or harassment for gifts (equivalent to dowry) by husband or in-laws or both after marriage.

(ii) We believe that "irretrievable breakdown of marriage as a ground" is being incorporated for unstipulated conditions that are arising in our changing society such as incompatible educational levels of spouses at marriage, child marriage, harassment by in-laws, women's demand for personal growth and idependence etc.

(iii) It has been our overriding belief that irretrievability of marriage cannot be established by the formal enquiries of the court or the law machinery alone. Therefore, the incorporation of

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such a ground should be compulsorily linked up with a system of inquiry that could be termed either 'social' or 'informal - legal'. For this we suggest the following:-

(a) An Advisory Committee must be attached to every court at all levels including the District and below in order to be referred all family dispute cases. Such a Committee should be constituted of people from leading social welfare and social development organisations of the area as well as social workers, respected citizens and professionals - i.e. peoples' representatives from cross section of society. (b) Incorporated within such a Committee should be a couple, or more if necessary (according to the level of the court and population of the area) social workers and marriage counsellors. (They should be professionally trained as far as possible. If professionals are not available then effective women's organisation or even respected members from the community/communities of the married parties could be requested to help.) These counsellors on the directive of the Advisory Committee counsel the parties involved in a divorce case and also if possible work on their families to find out whether in fact the marriage has irretrievably broken down. These social workers/counsellors would present their report to the Advisory Committee who would then give their opinion regarding the case to the concerned court. The officiating judge would be required to take this opinion into consideration. (c) We are of the opinion that for family disputes the Government must as soon as possible set up the Family Court system to expediate disposal of family based disputes affecting the personal lives of women, children and men. These would also deal with cases of divorce.

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(iv) No definition but stipulation of circumstances.

(a) It is not advisable to define irretrievable breakdown of marriage as it might limit the scope and deduct from the dynamic character of this law that is necessary for it. (b) Instead, some circumstances could be identified as indicating irretrievable breakdown such as living apart for a considerable time (12 months) and or absence of cohabitation, pitiable condition of children, etc. However, it is not even possible to envisage all possible circumstances and therefore this provision should be open ended. (c) I suggest further that as in Chapter III Section 9 re: the Restitution of Conjugal Rights and Judicial Separation, the term 'reasonable excuse', so the term 'irretrievable breakdown' also cannot be reduced to a formula and would vary with time and circumstances. It will have to be determined by court (with the help of the proposed Advisory Committees' report) in each individual case in light of features peculiar to it.

(v) Mere 'living apart' should not be considered sufficient to establish irretrievability. Other situations that necessiated living apart should be clearly mentioned. The same holds for 'non-consummation' of marriage.

3. Petition for divorce.

(i) The petition for divorce must be entertained any time after marriage without stipulating minimum period.

(ii) The decree of divorce however may be granted not earlier than one year after marriage in case divorce is demanded before this period.

(iii) Judicial separation may be granted in the first instance and without any delay.

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4. Presence of children.

Presence of children should be only partial bar in order to grant a decree of divorceo on the ground of 'irretrievable breakdown' or marriage. Both the spouses however must be ready to undertake responsibility of the children as required of them by the court.

5. Maintenance and Financial Security.

(i) The wife can oppose the divorce petition if she feels that the court may hand over the children to the husband where they may not be adequately looked after.

(ii) Under the same issue the law must provide for the children to be restored to the fit parent. Even if the woman is not earning she must be granted equal rights over her children and the husband cannot snatch them for her.

(iii) Wherever the children may stay, looking to their overall well being, the father must be compulsorily required to provide maintenance for their survival. If the woman is also earning then proportionate contribution should also be made by her. The proportion of maintenance must therefore be worked out considering the total income of the man (and the woman if she is earning), the number of dependents i.e. children, their varying survival needs etc.

(iv) The maintenance of the woman as long as she is single alive is provided for in the law. However it is the recovery that always causes a major problem. For this we suggest the following:-

(a) Maintenance must be cut at source for all Government employees and debited to the woman's account. (b) For those defaulters in business a threat to confiscate their licence or jail them after first default, should be instituted. The threat may be carried out after the second default in continuation.

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(v) The man can in no situation claim maintenance from an earning wife whether he is earning or not.

(vi) Maintenance according to the proposed law should be given from the time the woman and children start to live apart. It can be claimed as soon as judicial separation is granted.

(vii) If the divorce is granted after mutual consent of the spouses then all gifts of the wife at marriage must be hers.

6. Share in husband's property.

(i) The woman, but not the man, must have a right in as much inherited property of the spouse as it brings an income equivalent to the maintenance stipulated by the court for her and the children with her in lieu of the maintenance. She should however forfeit it to the children if she remarries.

(ii) If the wife was earning before divorce she must have equal share in the property of her spouse acquired after the marriage and upto the date of living together.

7. Divorce by mutual consent.

We propose that to make the divorce law more meaningful the existing ground of mutual consent must not require both parties to move a motion together after six months. Once the divorce petition has been filed, unless it is jointly withdrawn by the parties, either party can obtain the divorce decree without requiring the other party to be present after 18 months of having filed the petition. Maintenance should be granted from the time since the petition is filed if the wife and/or some/all children are with her.

C. Conclusion.

The above is the statement of the workers of 'Seva Mandir' framed after prolonged discussion and reference mainly to the 'Report on the Status of Women in India (Towards Equality)' presented to the Parliament in 1975. We endorsed all recommendations made by the authors of the above report re: the issue of divorce generally.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 167

[Comments/suggestions received from Dr. Ila Pathak, Secretary, Ahmedabad Women's Action Group, Ahmedabad.]

I. Section 13C(a):

(a) In Section 13C(3), the word "not" seems to be a mistake in the sentence "that the marriage has not broken down irretrievably".

(b) Similarly from Section 28A(3), the word "not" in the sentence "that the marriage has not broken down irretrievably" should be removed.

II. Section 13C(4):

(a) Section 13C(4) provides that "No account shall be taken of any one period". The words "one period" may denote that only one period of three months can be excluded while counting the period of three years of living apart is to be taken into consideration. The word "one" should be deleted and the words "any period" (not exceeding three months in all) should be there.

(b) The last portion of section 13C(4) beginning from "but any other period during which the parties left each other shall count as part of the period for which the parties to the marriage lived apart" should be deleted as the first portion of sub-section (4) is clear enough.

(c) Similar provision may be made in Section 28A(4).

III. Section 13C(5):

(a) Section 13C(5) is also required to be simplified to avoid any question of interpretation and multiplicity of proceedings arising therefrom.

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(b) The words "living apart" may in some cases include living apart under the same roof. Therefore, reference to the same household may not be appropriate. However, "living apart" should have nexus to not having relations as husband and wife because of the breakdown of marriage.

(c) Similar provision must be made in Section 28A(5).

IV. In Section 13C, the definition of "irretrievable breakdown of marriage" is not required. However by adding proviso or inclusive definition in Section 13C(1) or (2), alcoholism, habit of gambling resulting in financial ruin of the family, drug addiction on the part of the spouse and cruelty by members of the family in case where the spouse has not taken any steps to mitigate it for a period of one year should be specifically included. The said grounds do not come under any of the existing grounds under the Hindu Marriage Act or the Special Marriage Act and cruelty by family members, will cover cases where cruelty is inflicted for not giving dowry or insufficient dowry or for any other superstition prevalent in our country.

V. The suggestion of the Joint Committee on the Marriage Laws (Amendment) Bill, 1981 that the irretrievable breakdown of marriage should be the main ground under section 13 and all other grounds would be the grounds for such breakdown of marriage; will work hardship as over and above the grounds mentioned in Section 13 in each case irretrievable breakdown of marriage will have to be proved. If irretrievable breakdown of marriage is independently kept as a ground in itself, it may cover those hard cases which do not specifically fall under any of the grounds in section 13. Under the circumstances, section 13C as presently enacted will serve a better purpose.

VI. <u>Section 13D:</u>

(a) In section 13D(1), in the words "will result in grave financial hardship to her", the words "financial or any other hardship" should be added. Apart from financial hardship, cases where the spouse has become invalid can be covered under "any hardship".

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(b) Similarly in Section 13D(2)(b), the words "shall result in grave financial hardship" be changed to "shall result in grave financial hardship or any other hardship".

(c) Similar provision be made in section 28B(1) and (2)(b).

VII. Two additional provisions are required to be made generally under the Hindu Marriage Act:

(1) In the petition for divorce, the spouse asking for divorce should state on oath whether he or she wants to make adequate provision for maintenance and if not able to make such a provision, the reason for the same. In cases where maintenance is not given, whether he or she is willing to part with the share in the property owned or possessed by the spouse.

(2) In cases where because of the existence of the grounds for divorce, any financial hardship was undergone by the spouse, adequate provision to compensate such financial hardship should be made at the time when decree for divorce is granted.

(3) Instead of separate application for maintenance of wife and custody of children, it should be made part of the proceedings for divorce or judicial separation claimed under the Act so that separate appeals have not to be gone through in such cases.

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Note regarding Lok Adalats:

At the time of discussion with the Joint Committee on the Marriage Laws (Amendment) Bill, 1981, the question of Lok Adalats was raised. In Gujarat the disposal of the disputes - matrimonial, civil or labour - are disposed of by constituting Lok Adalats. Lok Adalats consist of social workers, lawyers and Judges. The Lok Adalats are constituted in each district with a view to dispose of pending cases and also to prevent future litigation. In each district, when the Lok Adalat sits, sittings are announced and the citizens are requested to refer their pending disputes as well as disputes that may require decision of an independent authority. Such disputes are sent to the Chairman of the District Committee in advance and they are allotted to Lok Adalat. The members who are working as mediators, try to settle the dispute by sorting out the disputes without any strict rules of procedure or evidence required in a court of Law. Just solutions are tried to be arrived at by agreement of the parties and if the parties agree, they sign a Purshis regarding settlement of their dispute. If it pertains to pending cases in the Court, the next day or during the next week the case is put up before the regular Court and with the consent of the parties, in view of the Purshis arrived at by them before the Lok Adalat, legal order is passed either in the terms of a consent decree or a decree on admission of the parties or disposal of a case in view of the settlement arrived at between the parties. If it pertains to a dispute which is not before the Court, it comes to an end by agreement of the parties before the Lok Adalat. This method has succeeded in Gujarat which can be seen from the following statistics:

1.	Number of Lok Adalats constituted in different districts of Gujarat	31 camps from March '82 to Dec.'82.
2.	Total cases referred to in all Districts to Lok Adalat:	6849 cases dealt with.
3.	Cases disposed of by Lok Adalat in all District in the State of Gujarat	3779 (Compromised) 1024 (Prelitigation advice)

4. Average of Court cases disposed of in each district within one day: of the working of the Lok Adalat:

No. of cases	Nature
41	Civil
15	Matrimonial
42	Criminal and 70 labour cases.

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The disposal of the cases before the Lok Adalat saves time of the Court which would have been spent in Court procedure and going through the strict rules of evidence and disposal of intermediary applications. The rigid atmosphere of the Court does not exist and, therefore, the parties try to come to terms on the basis of social and moral values. The disputes which are trivial and which are pending in the Court because of rigid attitude of the parties get solved and disposed of before the Lok Adalat. The success of the Lok Adalats in the State of Gujarat leads one to think of experimenting with the same in the family causes concerning marriage, divorce and succession problems. In the atmosphere of the Court and when the strict procedural formalities are to be gone through, it may not be possible to resolve family disputes which are more social in nature rather than legal in their intent and purport.

Within the framework of law as it exists, it is not possible to introduce Lok Adalats for the purpose of resolving family disputes. However, over and above the provisions already made by law, if the Lok Adalats are formed, the experiment can lead to expeditious disposal or settlement of family disputes.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 168

[Comments/suggestions received from Shri Manoher Raj Saxena, President, A.P. Democratic Lawyers Association, City, Hyderabad.]

The Hindu Marriage Act 1955 brings a great change in the conception of "sacrament" marriages. It changes the old conception of religious character of the Hindu Marriages. The polygamous form of marriage of sastras has been abolished once for all by making marriages hereafter performed as monogamous one. All the restrictions against inter-caste and inter-community marriages have been done away with the pave the way for building up homogeneous and casteless society.

It is true that all matrimonial legislation in the beginning were based on conservative and orthodox attitude. Since recently more liberal attitude has been adopted, but still the realistic approach has yet to be adopted to enable the society to keep pace with the march of civilisation in modern times. This approach is essential because harmonial marital relations is the important foundation for the development of the individual and the society. In order to achieve the above purpose, Law and Procedure has to be more simplified.

Section 29 of the Hindu Marriage Act 1955 recognised customs to obtain the dissolution of a Hindu Marriage. In this regard let me suggest that valid customs among communities so far recognised by the courts to be listed and appended to the Act instead of making it a matter of contest in the courts.

Under the present enactment, the provisions for judicial separation and divorce are based on the principle of "fault and guilt" and one has to establish the guilt of the other party for the break down of the marriage. This procedure prolongs the litigation and creates frustration among the couple and adversely affects the children, more so rules down the possibility for reconciliation.

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Under the present Matrimonial Law, judicial separation and divorce is based on the doctrine of traditional theory of matrimonial fault and culpability as a ground for divorce and the 2nd ground is the theory of frustration by reason of specified circumstances. The third ground is the theory of consent, but however, there is no provision for dissolving the marriage which have broken down irretrievably. Under the present enactments, judicial separation or divorce cannot be granted even when the court is satisfied that the marriage has completely broken down or broken up.

Under the present enactments, the principle is based on a civil wrong and therefore one has to prove wrong done and get the relief. It is clear that when there is a broken marriage relationship there is absolutely no possibility of reconciliation but there is no provision in the present enactment to treat irretrievable break down as a ground of divorce.

The proposed enactment will not leave the law courts helpless in granting the remedy as observed in the following cases:-

Mahinderpal Singh Vs. Kulwant Kaur -
AIR 1976 Delhi, page 141
and AIR 1982 S.C. page 1260

Under Section 13(C) of sub-section (3) and in sub-section 2 of Section 28A of the proposed amendment, for the satisfaction of the court, the following circumstances be added:-

If the court is satisfied on the evidence:

(i) that the gulf in the marital relations between the parties remain as an unresolved conflict.

(ii) became meaningless for both the husband and wife to live together.

(iii) circumstances resulting into dead-lock.

(iv) cohabitation not resumed for one year or upwards.

(v) non-consummation of marriage for any reason for a period of three years.

Regarding Section 13(D) of the proposed bill, I am of the opinion that no special right to oppose the petition on the ground of hardship is required when Section 13(C) provides an enquiry for the satisfaction of the court on the grounds of irretrievable break down of the marriage which in itself admits and provides the right of defence. In Section 13(D) of the proposed Marriage Laws (Amendment) Bill, the discretion given to the court for dismissing the petition is in conflict with Section 13(C). I hold the similar view with regard to Section 28(B) of the Marriage Laws (Amendment) Bill.

Let me suggest that marriage and Sexual consultation centres to be constituted, the members of which should be physicians, Psychologists, Legal Advisers, Social Workers and Educationists. These centres should act as reconciliation Boards.

I suggest that a clause to Section 13(B) of the Hindu Marriage Act and Section 28 of the Special Marriage Act, the following be added,

> "on the petition for dissolution of Marriage filed by mutual consent on the ground of irretrievable break down of the marriage, the court should pass a decree of divorce independent to clause 2 of Section 13(B) of the Hindu Marriage Act and 28(2) of the Special Marriage Act."

In view of Sections 24, 25 and 27 separate clause 13(D) in the proposed amendment Bill is not necessary.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 169

[Comments/suggestions received from Shri T. Venkata Radha Krishna,Murthy, Lecturer in Law, Osmania University, Hyderabad.]

As Maha Mahopadhyaya, Sri P.V. Kane said, "From the times for which literary tradition is available, Marriage has been highly thought of by Hindus". According to Hindu Law Marriage is a Sacrament. It is not a mere Social Contract. Divorce was unknown to Hindu Law for Centuries.

However, as modern Hindu Society changed, divorce was allowed in 1955 under Hindu Marriage Act, on some 'Fault' grounds. In 1976, Divorce by mutual consent has also been allowed. Now by The Marriage Laws (Amendment) Bill, 1981, 'irretrievable break down of marriage' is sought to be made a ground for divorce.

I submit that this ground should not be allowed for Hindus, as it undermines the institution of marriage itself. The provisions of the proposed amendment have been virtually copied from English Matrimonial causes Act, 1973, ignoring the Indian Social context. I vehemently oppose the introduction of this amendment specially on the following grounds, among others:-

1. If this ground is allowed, divorce will become too easy.
2. Either spouse can get divorce at his will and pleasure by living apart from the other spouse for the period of three years.
3. A spouse can take advantage of his own wrong or guilt or matrimonial offence against the other and get divorce.
4. The availability of this ground is a temptation for breaking away the marriage tie for sinister motives and for having a variety in sexual experience.
5. Irretrievable break down of marriage is usually due to reasons covered by any of the grounds already provided for in Hindu Marriage Act, 1955. Other cases are very few. It is not advisable to sacrifice the sanctity of the institution of Hindu Marriage for the sake of these rare cases.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 170

[Comments/suggestions received from Smt. V. Prabhavathi, President of Hyderabad District Federation of Mahila Mandals, Hyderabad.]

This Bill has come none to soon. When Parliament has accepted the rationale of Divorce with mutual consent a very progressive provision which was originally introduced in Special Marriages Act of 1954 - to be incorporated also in the 'Hindu Marriage Act' by an Amendment in 1978, then as a natural corollary of it, this provision of irretrievable breakdown of marriage as a ground for divorce should come.

While we Indian recognise that marriage is a highly evolved integral relationship in society, we also believe that natural love and voluntary adjustment is the binding factor in the marriage and the obligations towards their progeny and society are the cementing factors. But for some reason and some cases, incompatibility and friction become a constant factor to sour the marriage and when all efforts for conciliation or reconciliation fail, then separation and ultimately a divorce as a surgical operation becomes necessary.

Is irretrievable breakdown of the marriage only a subjective feeling of one of the parties of marriage after it turned sour or could it be objectively defined?

In my opinion, the fact that husband and wife are living separately and also the opinion of one of the partners that seriously marriage is beyond redemption should together be taken as a ground for consideration of the dissolution of marriage. Here I like a distinction to be made while fixing the time of separation of the husband and wife for those who are above the age of 30 years and otherwise. When the age of husband and wife are above 30 years a

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separation of one year could be reckoned as a ground. If any applicant is below that age it should proportionately be increased. The idea is that a man or woman after reaching 30 years can think more maturally and responsibly.

In any divorce proceedings, the future of children should be one of the most important consideration of the Court. Section 13E and 28C, I think, fully provide for the protection of the children by the Court.

Subject to above observations, I fully support provisions of this Bill but I cannot help observing also at the same time, that 35 years of Independence and after amending our Constitution to say that ours is not only a secular Democratic republic but a socialist too, we could not enact yet a common civil code applicable to all the citizens but could only go for amending parochial legislation.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 171

[Comments/suggestions received from Smt. Indira Panda, Lecturer, Post-Graduate Department of Law, Utkal University, Bhubaneswar.]

Study of historical development of love of divorce through legislation and precedents based on 'fault', "consent" and "breakdown" theories till 1981 indicates that the time is ripe for introducing a irretrievable breakdown as an additional ground for the benefit of the parties. Introduction of this ground is not for liberalising divorce or undermining the stability of marriage but to bultress it and when regretably the marriage has broken down irreparably, to enable the empty shell to be distrayed with maximum fairness and minimum bitterness, distress and humilation. When the purpose of marriage is defeated and the object of matrimony can not be fulfilled, then the marriage can be said to be brokendown completely.

But the provisions in the drafted Bill requires a thorough study for the necessary changes and introduction of more safeguards in light of statement of objects and reasons given by the then Hon'ble Law Minister while introducing the Bill in 1981.

Legal illiteracy of the mass, biased judicial views and inadequate implementation of the measures incorporated in the social legislations stand as stumbling black against progress in this area.

Sec. 13C (i) The sitting judge should not be below the rank of District Judge.

Sec. 13C (i) and (2) indicate that more emphasis is given on the period of "living apart" and "breakdown" aspect is inconspicious.

Sec. 13C(3) The spirit underlying the sub-section is not clearly understood. The sole idea behind is that apart from the stipulated period, the court is to be satisfied beyond doubt that the marriage has broken down irretrievably. The provision must indicate it clearly.

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Sec. 13(C)(4) Should be more clear and precise and the use of the phrase "in all" is superfluous if only one period is taken into account.

Section 13 C(5) "Living apart" mentioned in 13C (5) read with 13C (2) is bound to create problems and need better explanation keeping in view the Indian Women's social and economic status.

Is it expected from such illiterate village women to be able to live apart from their husbands without economic supports for 3 years and then come to the court of law for justice? On the other hand the parties may live apart voluntarily or out of necessity e.g. carrier women working at different stations, house-wives kept at villages for looking after household and old parents, husband residing abroad for studies and business. Such situations are on increase now. Contrary to these, acute difficulties and other hardships, usually force the wives to remain under the same roof (household) through marriage in true sense no longer exists amongst them.

During living apart period, she may not get or claim any maintenance as the case may not be covered under the section 18 of the Hindu Adoption and Maintenance Act.

Section D (1) The inclusion of wife's right to oppose the husband's divorce petition on the ground of grave financial hardships to her is praisworthy and certainly protect the interest of the women. Yet it is inconsistant with the object of amendment (In all circumstances - to dissolve the marriage). So instead of supressing the husband's right, some other effective provisions for protection of wife and children by way of maintenance and other social security measures be made when no relationship exists in reality.

Section 13D (2)(b) What is meant by "other person concerned" is not clear and who will come under this catagory? What is by "interests of other persons concerned"?

Rest of the measure mentioned are encouraging.

13E The expression 'children' under explanation - should include (a) child in the mother's womb' (b) ..... and married daughters fallen victim of dowry etc. whom the father would have otherwise supported.

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Necessary arrangements may be made for safeguarding the Children's share in ancestral, separate property and dwelling house of the parties alongwith adequate provision of maintenance.

Irretrievable break down has to be established as a fact in each individual case by the court, and ceasation of cohabitation for three years may help in establishing the ground but not to be fully depended upon.

Suggestion: About speedy disposal.

Quick disposal of the suit is very much essential because justice delayed is justice denied". So some provision in the line of S.B.I (2) of the Act be incorporated.

Sec. 14 of the Act needs attention in view of "living apart" period and breakdown circumstances. Registration should be made compulsory along with performance of customary rites.

Post Divorce Problems.

Indian matrimonial statutes are essentially deficient in making provision to meet the problem arising after divorce. There are hardly any provision relating to settlement of the spousal property and the matrimonial home and custody of the children.

Spousal maintenance

Maintenance and divorce proceedings should be held together to give the other party immediate economic support. No decree should be passed unless:-

(a) Adequate arrangements of financial or otherwise are made for the children.

(b) Adequate settlement of the spousal property is to be made particularly for the benefit of the needy spouse including the settlement of the matrimonial home.

Maintenance whould be given to who ever is needy and must be ordered early to surve the purpose and enforcement should be made easier and workable.

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(b) Settlement of spousal property-

The court should have full power of making a settlement of the entire property owned by them individually and jointly and the court should also have power to cancel all pre-divorced settlement by will and deed etc.

(c) Problem of residence is great for divorced wife - Mere often matrimonial home is owned and kept by the husband - Decree should not be made unless settlement of matrimonial home is made and if children are kept under her custody, they should be allowed to remain there.

(d) Problem of the harassed wife - usually wife suffers serious and repeated physical injury from her husband and she has no protection except to knock at the door of the police station, that too in vain. So "crisis cantres" should be established and kept open for 24 hours for such people's support and residence.

(e) Custody and other problems relating to children:-

Unless adequate arrangement for custody and financial matters are made for the children, no decree should be passed.

It is desirable they should be treated as separate parties to the litigation and their interest should be of upper most consideration. They should be preferably be represented by an independent counsel of their own and not of their parents, and this lawyer should be appointed by Court for them.

There should be adequate settlement of the property of their parents for the children. If there is no property, the State should take up the obligation for making arrangements for their education and upbringing till they are independent.

Family Court:-

Unified family court should be set up encompassing the support of well organised auxillary services of counselling, reconsilation, investigation, enforcement and legal aid service centres, which should have atleast one women Judge in the rank of

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District Judge with legal practice and research experience in family law for ten years. It should have jurisdiction in all familial matters, marriages, matrimonial causes, maintenance and alimony, custody, education and maintenance of children, settlement of spousal properties, guardian and custody of minors person and property para familial inter-spousal assaults and other offences of criminal nature, inter-spousal and inter-familial torts and contracts. Judges of family court and staffs should have refresher training course of continued education programme in family Law. Procedure should be flexible and reflect the nature of divorce problems covered by family Law. Language, conduct documents and legal representations should be simple and clearly defined. Trials should be under camera and confidential court records be maintained. The cases should be disposed off speedily. Lawyers, social workers, welfare officers, psychiatrists should jointly assist the court. The judges manning the courts and counsellors should be trained lawyers, not only in family law but psychiatry, psychology and sociology.

The family court judge should be of District Judge cadre and a lady member should be there to assist the court.

(a) Support of Auxillary or support service is important: The prime objective of any auxillary or support service is to have parties at reconciliation on conciliation and to lessen the adversial atmospheres.

The auxillary and support service will include family counselling and conciliation service which should do -

Pre-marital counselling, (ii) Reconciliation or conciliation counselling (iii) Post adjudicating counselling.

The counselling agency may consist of (1) a marriage counsellor (2) a social worker of repute (3) a psychologist (4) a doctor and a lawyer.

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(b) The investigative service may help the family court judge to arrive at a viable decision. So the service will look after the collecteral matters like property settlement, custody of children etc.

(c) The family court should have Legal Aid Service helping the needy party and the children to represent themselves and contest the case.

(d) Enforcement service is also essential otherwise the decree regarding maintenance etc. merely become a scrap of paper.

Conclusion:

Implementation of the social reforms and court order of maintenance custody etc. through enforcement services in the prevailing adversial conditions to be done with the help of:

(a) Legal Aid Clinic and auxillary services

(b) Orphan and destitude homes.

(c) Employment and rehabilitation programme and

(d) Spread of legal literacy through mass medias, communication programmes and documentary films.

(e) Periodical survey/study of outcome of social legislation through questionnaires consus-reports.

It is necessary to formulate an uniform law of marriage and divorce for all keeping in view the law followed by the existing system in India. Article 44 of the Constitution of India gives a positive direction in this regard.

Survey and conceptual analysis of philosophy, structure and attitude of Judges and operation of family court and auxillary services and their constructive criticism, research and proposals for reform will lead to a prosprous future.

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CONFIDENTIAL (18)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 172

[Comments/suggestions received from Smt. Basanti Pany, Vice-President, Kasturba Nari Mahal, Bhubaneswar.]

1. If the divorce proceedings are handled by a Lady Judge, the different aspects of the divorce case could be better appreciated as the female spouse involved in the case would feel free to give her testimony.

2. For women, who are economically ill placed, the court proceedings may be free of cost for them.

3. Court proceedings of divorce cases should not be allowed to linger on. The cases should be disposed of within one year.

4. The period of separation is 3 years and the time for reconciliation is given as 1 year. This makes four years which is a very long period. In fact after three years of separation, one year of reconciliation period is not necessary. In my opinion the total period before the divorce case is finalised should be totally three years. It could be only two years of separation plus one year of reconciliation period.

5. But the reconciliation period will be necessary if either of the parties so desires.

6. Their should be an injection order restraining the respondent from transferring their substantial properties.

CONFIDENTIAL (19)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 173

[Comments/suggestions received from the Bar Council of West Bengal.]

This Bar Council of West Bengal has carefully considered the several provisions of the Marriage Laws (Amendment) Bill, 1981. This Council is of the opinion that having regard to the changing circumstances brought into the Indian social system during the last 25 years it is appropriate that in addition to the several provisions for which a Court may grant a decree for divorce or dissolution of marriage the proposed amendment which adds another ground that the satisfaction of the Court that a marriage has irretrievably broken down should enable the husband or the wife as the case may be to make a petition for divorce.

This Council have given anxious consideration to the following three aspects viz.:-

(a) Financial instability of the spouses.

(b) Presence of children

(c) Inheritance of property of spouses after a decree for divorce is granted.

With regard to clause (a) this Council is of the view that there are already provisions in the Marriage Laws for giving alimony as also for making provisions for maintenance of children. As such this Council does not consider that mere existence of children or financial instability of a spouse should be a ground for refusal of a petition for divorce if the Court is otherwise satisfied that the marriage has irretrievably broken down. Otherwise the children will be compelled to live in a wholly incongenial atmosphere which will adversely affect the minds of the growing children. Again if provision for alimony can be made for giving a lump sum payment to the deserving spouse having regard to the financial condition of the other spouse there cannot be any justifiable reason for refusal for granting petition for divorce on the grounds that the marriage

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between the parties has irretrievably broken down. Even if in a case where circumstances do not permit for providing for any alimony, this Council is of the view that the situation cannot be improved by making such a ground as refusal of the petition for divorce. It may be that in such circumstances neither of the parties will be able to marry again because of financial insolvency but where the court is satisfied with the marriage has irretrievably broken down the parties should not be compelled to live together. Such compulsion may have a very adverse effect on the parties themselves as well as to the neighbours. Such situation will also create a very hostile atmosphere in the house and none of the parties are likely to make any effort for good living. Such a situation will not also benefit the society.

While this Council is of the opinion that subsequent to grant of divorce of that spouses should have absolute claim over the ancestral property inherited by them individually but with regard to property acquired by the spouses, after the marriage and upto the date of living together, the Court may give a part of such property to the other spouse having considered his or her contribution or efforts in acquiring such property. This suggestion is made because it is felt that acquiring of such property is mainly possible by the joint efforts of the husband and wife while they were living in the matrimonial home.

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CONFIDENTIAL (21)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1982.

MEMORANDUM NO. 174

[Comments/suggestions received from Women's Co-ordinating Council.]

1. Appropriate safeguard should be provided in the amended Act under section 13C for disallowing the petition for divorce by a husband when there is a malafide attempt to avoid responsibilities to the family including the children, as explained in section 13E(a)(b) and (c).

2. As from our experience of the victimised young married women in the rural areas where admitted by the husband either living with another/permanently with a knowledge of all concern and/or contrary to the provisions of law married another woman and living with her say for more than one year, it will be unreasonable for the victimised women to wait for 3 years to invoke section 13C. It thus appears to 4C that the period should be 2 years.

3. Specific provisions should be there for refusal of an application for divorce by a husband under section 13C, unless sufficient reliable evidences are adduced and bonafide is established and to avoid the abuse of the provisions of law by the husband.

4. Adequate provisions relating to panal provisions should be provided in the amended Act against a husband if subsequent to an order obtained by him in a petition for divorce. Under section 13C during any period, say within 6 years, it is brought to the notice of the court that the said order was procured by the husband by supressing truth and/or relevant facts or circumstances from the court in which the said application for divorce was made by the husband.

5. In view of very large number of illiterate married women in the rural areas there should be provisions for review of any order made on a petition seeking divorce by a husband, so that in the event there be any case of procuring ex-party order and/or an order supressing relevant facts or circumstances in such petition by the husband.

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CONFIDENTIAL (22)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 175

[Comments/suggestions received from Dr. S.R. Bhansali, Associate Professor of Law, University of Rajasthan, Jaipur.]

In Shakhawati and Marwar areas of Rajasthan, young persons use to leave their places of residence, even after marriage, in search of business or employment. They used to go to some places in Maharashtra, Tamil Nadu, West Bengal or Assam and used to return once or twice in 3 or 4 years at the time of Deepawali or any function in their villages. In the family of such persons, living apart for 3 to 10 years is a common practice. Therefore, "living apart" with the consent of both the parties should not be considered as a ground for irretrievable breakdown.

In Dr. N.G. Dastane V. Sucheta Dastane, (A.I.R. 1975 SC 1534) the Supreme Court held that even after the continuous cruelty committed by wife against the husband, she became pregnant, and therefore, that amounted to condonation by husband. Here also, if during the continuous living for three months, if the wife became pregnant, it should amount to condonation of living apart.

In S. Garg V.K.M. Garg (A.I.R. 1978 Delhi 296) the Division Bench of the Delhi High Court held that due to financial difficulties of the husband and comfortable position of the wife and also due to the discouraging conduct of the husband towards the wife, the wife had a reasonable excuse for not resigning her job and for not coming to live with the husband, at Delhi. The question of the wife withdrawing herself from the society of husband did not arise at all because the husband and wife have not been able to decide where the matrimonial home should be set up. The court was of the view that the wife's residence can also be a place for matrimonial home.

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In Mirchumal V Smt. Devi Bai (1976 WLN 704) the Rajasthan High Court also held that if the wife is serving then the husband cannot compel her to live with him. According to the provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973, a family consisting of five or less then five persons shall hold land upto the prescribed ceiling limit only. The family may consist of one person only. This has encouraged fictitious divorce among husband and wife. The divorce is taken by consent on paper and thereafter wife becomes separate unit. A divorced woman being a separate unit can hold, such land for which a family consisting of five persons is entitled. Such a divorce is only a paper divorce and not an actual divorce. The husband and wife continue to remain together and even after divorce they procreate children.

The theory of irretrievable breakdown will further add to the existing conditions of avoiding ceiling provisions.

There is a ban on the transfer of land by sale, gift, mortgage, lease etc. by a person belonging to Scheduled Caste or Scheduled Tribe to a person belonging to non-Scheduled Tribe or non-Scheduled Caste. To avoid compliance of such provisions, the following lawful method has been evolved. The wife of a non-Scheduled Caste husband used to take divorce by consent on the paper. After divorce she marries with a male belonging to Scheduled Caste. Such a marriage is also shown on the paper only and the marriage is got registered and a registeration certificate is obtained. She being a wife of Scheduled Caste person becomes a member of Scheduled Caste. Thereafter, she purchases land from a person belonging to Scheduled Caste and the document is registered. After sometimes, she again obtains divorce from her second husband and remains divorced on paper throughout her life. It is important to note that the poor lady who goes through such an ordeal has no knowledge of all such developments as she simply puts her thumb impressions on many documents as per directions of her first husband and the advocate. She continues to live with her first husband, she never moves outside her house and all these changes remain only as the paper exercise so as to avoid any future legal complications. She continues to procreate children through her first husband. This amendment will further add to such conditions .

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Article 44 of the Constitution of India provides that the State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India. These amendments in the Hindu Marriage Act and the Special Marriage Act are not towards the goal envisaged in Act. 44. The time has come to make necessary amendments with equal forde in the Mohammdan Law also. Any law which does not protect the Muslim wife equally would be contrary to Art. 14 and unconstitutional for that reason. The concept of irretrievable break down should be equally made applicable to the Muslim and necessary law may be made for that purpose also.

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 176

[Comments/suggestions received from Smt. Suva Roy Choudhury, 14/6, Gariahat Road, Calcutta-700019]

In my humble view, though theoretically the addition of Section 13C would appear to be an improvement on the existing statute, I am afraid that in actual practice it would not touch even the fringe of the problem. Under the provisions of the present law also a divorce suit may be instituted by an aggrieved wife on the firm assumption that her marriage has been irretrievably broken down, and that there is no possibility of a reunion with her husband. The difficulty is that the amendment proposed would give little relief to such a party, unless some effective provisions are introduced to expedite the process of the law. A persecuted wife, who is normally the weaker party, will have to go through the agony of unending court proceedings at her expense in proving the irretrievable breakdown, despite the new section proposed to be incorporated in the Act.

My views on the proposed section 13D is similar to those I have given on Section 13C. I consider this section totally unrealistic. I am unable to comprehend how a financially weak and helpless wife could effectively oppose a divorce petition filed by an ill-motivated husband, if the proceedings pend in a trial court for months and years, during which the unfortunate opponent will have no means to keep her own body and soul together. Besides, no useful purpose would be served by merely opposing a divorce petition in a case where the husband is bent upon persecuting his helpless wife with the object of getting rid of her. Section 13E, which appears to be a corollary of Section 13C, also suffers from similar infirmities as those I have stated hereinabove. I feel that there is nothing new in this Section that one could commend for adoption.

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In conclusion, I am constrained to have to mention that the suggested amendments appear to be only half-hearted measures that would not help to solve the marital problems that women in India are being confronted with, notwithstanding the promulgation of the Hindu Marriage Act, 1955.

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CONFIDENTIAL

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 177

[Comments/suggestions received from Administration of the Union Territory of Lakshadweep, Kavaratti.]

As the entire local inhabitants in this Union Territory are Muslims and classified Scheduled Tribes, they are following Sheriat Law for marriages. Therefore, this Administration has no comments/suggestions to offer in the matter.

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(4)

Joint Committee on the Marriage Law (Amendment) Bill, 1981.

Summary of the suggestions sent by Smt. Naina L. Patel, Stree Niketan Sanstha, Sandesh Karyalaya, Sandesh Bhawan, Ahmedabad.

MEMORANDUM NO. 178

1. It is extremely difficult for aggrieved women to seek remedy through court because there are lots of difficulties and procedural hurdles with the result that they suffer. Divorce is the only remedy for them which can save them from suicide and prolonged sufferings. At the same time divorce laws should be simplified and process of law be expedited.

2. It is better to seek marriage councelling from good societies before seeking divorce. Many marrieges have been saved from going to rocks by proper advice from such institutions.

3. If both the parties are living seperately for one year they should be allowed to get divorce.

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(5)

Joint Committee on the Marriage Laws
(Amendment) Bill, 1981

MEMORANDUM NO. 179

Summary of the suggestions sent by
Shri Chandrakant Mansukh bhai Panchal,
Block No. B 11-19, Sarkari Basarat,
Ahmedabad, 380016.

....

1. In cases where wife and her parents are wrong and the husband is able to get divorce based on expert decision, he should not be asked to pay maintenance allowance to his seperated wife and children. It makes his life intolerable.

2. The divorce cases must be disposed of quickly, otherwise the life of husband becomes miserable.

3. If the husband and wife are forced to live apart, they must be allowed to do so but the period of seperation should be reduced to minimum if possible not more than one year.

4. In view of the difficulties faced by middle classes the divorce cases should be disposed of quickly to reduce their time of suffering, specially that of husband who should not be forced to pay alimony.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 180

[Comments/suggestions received from Shri Anil Mehta, Honorary Secretary, Bombay Incorporated Law Society, High Court New Building, Fort, Bombay.]

At the sitting of the above Committee we had suggested that the husband should not be given a share in the wife's property. During the course of the sitting in answer to question No. 9 it had been submitted by me that there should be a provision as proposed and that either party should have a share particularly the wife in husband's property but not in the inherited property. The questionnaire has been answered according to the evidence tendered with a slight modification that we have now suggested that the husband also should be given a share in the wife's property acquired after the marriage upto the date of living together. The question is whether there will be a hardship or not and not a question of being guilty. While granting divorce the concept of financial hardship should be borne in mind and it had been submitted that these have been adequately taken care of by the relevant provisions relating to maintenance and alimony both in the Hindu Marriage Act 1955 and the Special Marriage Act 1954. Although the questionnaire made no reference to family courts, to a pointed question asked by one of the members, I had submitted that there must be family courts and it would not be appropriate if the verdict of the family courts was final. During the course of the evidence, it had been pointed out that these family courts should not go through the same process as other courts do, viz., going through evidence and such other things. However, we, with the permission of the Joint Parliamentary Committee wish to make a clarification that what was intended to be communicated was that the family courts should have exclusive jurisdiction and that such courts should be bound by the rules of evidence. A provision relating to family courts should be included in the

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Amendment Bill and should form part of both the Hindu Marriage Act and the Special Marriage Act, 1954. There should not be more than one appeal.

As we had assured one of the members of the Committee that we shall be preparing a model draft of the bill, the same has been prepared and is enclosed.

REVISED DRAFT OF THE BILL AS PREPARED
BY MR. ANIL MEHTA, HON. SECRETARY,
THE BOMBAY INCORPORATED LAW SOCIETY.
- - - - - - - - - - - - - - - - - - -

REPRINT
AS INTRODUCED IN LOK SABHA ON 27TH FEBRUARY, 1981.

Bill No. 23 of 1981

THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

A

BILL

further to amend the Hindu Marriage Act, 1955 and the special Marriage Act, 1954.

BE it enacted by Parliament in the Thirty-second year of the Republic of India as follows:

Short title

1. This Act may be called the Marriage Laws (Amendment) Act, 1981.

Insertion of new ss. 13C, 13D and 13E.

2. In the Hindu Marriage Act, 1955 (hereinafter referred to as the Hindu Marriage Act), after section 13B, the following sections shall be inserted, namely:-

Divorce on the ground of irretrievable breakdown of marriage.

13C. (1) A petition for the dissolution of Marriage by a decree of divorce may be presented to the district court by either party to a marriage (whether solemnised before or after the commencement of the Marriage Laws

(Amendment) Act, 1981 on the ground that the marriage has broken down inretrievably.

(2) The Court hearing such a petition shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the Court of one or more of the following facts that is to say.

(a) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

(3) On a Petition for divorce being presented to the Court it shall be the duty of the Court to inquire, so far as it reasonably can into the facts alleged by the Petitioner and into the facts alleged by the Respondent. If the Court is satisfied on the evidence as to the fact that the marriage has irretrievably broken down it shall subject to the provisions of this Act grant a decree of divorce.

(4) Where in any proceedings for divorce the Petitioner alleges that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to

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with each other for a period or periods after the date of the occurence of the final incident relied on by the Petitioner and held by the Court to support his allegation, that fact shall be disregarded in determining for the purposes of sub-section 2(a) above whether the Petitioner cannot reasonably be expected to live with the Respondent if the length of that period or of these periods together was six months or less.

13Q (1) Where the grant of a decree is opposed by virtue of this section then

(a) if the Court finds that the Petitioner is entitled to rely, in support of his petition on the fact of two years' of living apart, and

(b) if apart from this section the court would grant a decree on the Petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship

to the Respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the Petition or in an appropriate case stay the proceeding until arrangements have been made to its satisfaction to eliminate the hardship.

(2) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the Respondent might acquire if the marriage were not dissolved.

Restriction on decree for divorce affecting children

13 E The Court shall not pass a decree of divorce under section 13C unless the Court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.- In this section, the expression "children" means-

(a) minor children;

(b) unmarried or widowed daughter who have not the financial resources to support themselves; and

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(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.

Attempts at reconciliation of parties to marriage

13F (1) If at any stage of the proceedings for divorce, it appears to the Court that there is reasonable possibility of a reconciliation between the parties to the marriage, the Court may adjourn the proceedings for such period as it thinks fit to enable the attempts to be made to effect such reconciliation.

(2) The powers conferred by the foregoing provisions is additional to any other power of the Court to adjourn the proceedings.

Amendment of section 21A

(3) In section 21A of the Hindu Marriage Act, in sub-section (1) after the word and figures" "section 13", at both the places where they occur the words, figures and letter "or section 13C" shall be inserted.

Amendment of section 23.

(4) In section 23 of the Hindu Marriage Act, in sub-section (1) in clause (a), after the word and figure "section 5", the words, figures and letter "and except in cases where the petition is presented under section 13C" shall be inserted.

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Insertion 43 of of new sections 28A, 28B and 28C

(5) In the Special Marriage Act, 1954 (hereinafter referred to as the the Special Marriage Act), after section 28, the following section shall be inserted namely:

Divorce of the ground of irretrievable breakdown of marriage

28A(1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage (whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1981) on the ground that the marriage has broken down inretrievably

(2) The court hearing such a petition shall not hold the marriage to have brokendown irretrievably unless the Petitioner satifies the Court of one or more of the following facts that is to say.

(a) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

(3) On a Petition for divorce being presented to the Court it shall be the duty of the Court to inquire, so far as it reasonably can into the facts alleged by the

If the Court is satisfied on the evidence as to the fact that the marriage has irretrievably broken down it shall subject to the provisions of this Act grant a decree of divorce.

(4) Where in any proceedings for divorce the Petitioner alleges that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him, but the parties to marriage have lived with each other for a period or periods after the date of the occurence of the final incident relied on by the Petitioner and held by the Court to support his allegation, that fact shall be disregarded in determining for the purposes of sub-section 2 (a) above whether the Petitioner cannot reasonably be expected to live with the Respondent if the length of that period or of those periods together was six months or less.

280 (1) Where the grant of a decree is opposed by virtue of this section then -

(a) if the Court finds that the Petitioner is entitled to rely, in support of his petition on the facts of two years' of living apart, and

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(b) if apart from this section the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interest of those parties and of any children or other persons concerned, and if of opinion that the dissolution of the marriage will result in grave financial or other hardship to the Respondent and that is would in all the circumstances be wrong to dissolve the marriage it shall dismiss the Petition or in an appropriate case stay the proceeding until arrangements have been made to its satisfaction to eliminate the hardship.

(2) For the purposes of this section hardship shall include the loss of the change of acquiring any benefit which the Respondent might acquire if the marriage were not dissolved.

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28C The Court shall not pass a decree of divorce under section 28A unless the Court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial

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Explanation:- In this section, the expression "Children means -

(a) minor children

(b) unmarried or widowed daughters who have not the financial resources to support themselves, and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselve

Attempts at reconciliation arties to ... iage

28D (1) If at any stage of the proceedings for divorce, it appears to the Court, that there is reasonable possibility of a reconciliation between the parties to the marriage, the Court may adjourn the proceedings for such period as it thinks fit to enable the attempts to be made to effect such reconciliation.

Amendment of section 40A

In Section 40A of the Special Marriage Act, in Sub-Section (1), after the word and figures "section 27" at both the places where they occur the words, figures and letter "or section 28A" shall be inserted.

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CONFIDENTIAL

(1)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 181

[Comments/suggestions received from the Government of Assam, Legislative Department, Dispur, Gauhati.]

Under Section 13D(a) where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under Section 13(C), she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her, etc. Where the grant of a decree opposed by virtue of this Section the court shall consider all the circumstances including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned.

While considering the circumstances, the court shall examine the petition opposing the decree it is necessary also to examine the provision as laid down under Section 13E. Here in this Section the satisfaction of the court for adequate provision for the maintenance of children borne out of the marriage is the main ground for decree of divorce. Children include the minor children, un-married or widowed daughter, physically and mentally affected children borne out of the marriage.

It is found that there is no provision for maintenance of other persons concerned. Therefore, the court shall not consider financial hardship alleged to have been caused to her in case of a grant of a divorce which will not be tenable.

Even if for the provision of section 125 of the Code of Criminal Procedure, there should be provision for maintenance of old parents by the children in that case also the maintenance of the old parents by the divorcee wife may not come on the way because in a dissolution of marriage by a decree of divorce when wife is the respondent, the husband is only liable for the maintenance of children borne out of the marriage.

Having regard to the legal provision as stated above, the words "other persons concerned" appearing in Section 13 D is not legally tenable and as such appears to be redundant.

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(2) CONFIDENTIAL (379)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 182

[Comments/suggestions received from Shri V. Deshmukh, Juthi Villa, Lachaumiere, Shillong, Meghalaya.]

As stated during the Committee's sitting, I am against the amendment to Hindu Marriage Act because:-

a) Unlike as the case of Muslims and Christians, only stray cases of irretrievable breakdown of marriage occur in our Hindu society.

b) As you are aware, it was in earlier days, while the marriages were settled/solemnised without consent of the Boy and/or a girl. Hence in those days, if such an amendment would have been proposed, I would have naturally voted in favour of such amendment.

c) Now we being in far advance stage, the marriages are settled with the consent of the Boys and/or girls, as also in certain cases, you would be aware, it is the future couple who settle the marriage and then seek the blessings/persmission of their parents/ guardians. As a result, these days in our Hindu society there are very rare chances of breakdown of marriage; or I would interprete it as stray cases.

Hence, in my opinion, it would not be proper to amend the Hindu Marriage Act for the sake of such stray cases, thereby making the whole community to suffer.

d) As far as I know there are seperate laws for other communities i.e. Muslims and Christians for marriages, While it was observed that the views of people who are governed by other laws were saught/recorded.

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(3) (380)

In this connection I would like to submit that the Hindu Law of Marriage is something divine, implications of which may not be understood in it's true perspective by the persons of other community, as such Government should not have sought their views while amending the Hindu Marriage Acts, and views of only Hindu should be taken into consideration.

Here instead of an amendment I would suggest that:-

There should be a Marriage Counselling Agency whose duty should be to reconcile the cases of acute disputes between husband and wife, if any arises, because I believe that as already stated earlier except stray cases there may not be any dispute between the husband and wife which are irrepairable.

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(4) CONFIDENTIAL (38)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 183

[Comments/suggestions received from Shri Shrenik M. Mehta, Convener, Law and Order Panel, The Nawanagar Chamber of Commerce & Industry, Jamnagar.]

My opinion/suggestions regarding the above Bill is as follows, in short.

(a) Hindu Marriage Act, 1955:

(1) New Section 13C(2):- Living apart should be for one year only and not 3 years. Three years is a very long period.

(2) New Section 13D(1):- This Section should be removed. Because financial hardship is not a good ground for objecting divorce. But wife should have a right to ask for maintanence (Permanent alimoney).

(b) Special Marriage Act 1954:

(1) Sec. 28A(2):- Living apart for a continous period of 3 years should be reduced to 1 year only.

(2) Sec. 28 B(1): In case of financial hardship to wife, maintanence should be granted, but divorce should not be withheld for mere reason of financial hardship.

In my humble opinion, further following amendments should also be made.

(a) Hindu Marriage Act, 1955:

(1) Sec. 13:- Recurrent attacks of epilepsy should be made a good ground for divorce.

(2) Sec. 13(VII):- Seven years should be reduced to two years.

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(b) Special Marriage Act, 1954:

(1) Sec.15(D):- This section should be amended as "The bridegroom should have completed 21 years and bride should have completed 18 years", for registration of marriage celebrated in other forms.

(2) Sec. 27(1B):- Desertion of the petitioner by the respondant, "should be reduced to one year only", immediately preceeding the presentation of the petition.

(3) Sec. 27 (1C):- Sentence of imprisonment to the respondent, for getting divorce, "should be reduced to two years only."

(4) Sec. 27(1F):- The following should be added "The disease not having been contracted from the petitioner".

(5) Sec. 27 (1H):- The respondent "has not been heard of as being alive for a period of seven years, should be reduced to two years only.

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(6) CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

(383)

MEMORANDUM NO. 184

[Comments/suggestions received from the Secretary, Vikas Vidyalaya, Wadhwan City, Distt. Surendera Nagar.]

(1) When two persons i.e. husband and wife with their mutual understanding consent they apply for divorce there should be one social worker caretaker on women side to see that under any influence woman is not enforced for divorce. Woman who has no child and there is no possibility for child under such circumstances woman oblige to leave her husband by taking forcible consent. They apply for divorce for mutual consent there should be provision by law to give special shelter to women to encourage their family union.

Woman wife should be given some part of the property from husband's property in such case, seperated wife should be given share in property of her divorced husband.

The woman who have children or a child should be given not less than five years period for Judicial seperation.

The divorce woman who has a child, the maintenance should be given for child and atleast child upto 10 years of age should be allow to stay with mother.

When wife applied for maintenance, there should be immediate consideration to give her ad-hoc maintenance during the court proceedings.

The time between judicial seperation, maintenance case should be on summary trial. In Divorce Act, there should be common irrespective of communal custom or code.

When husband and wife are not in good terms with each other the wife should be given maintenance and should be allowed to stay seperate.

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There should be compulsory medical certificate before marriage in order to avoid future complication in seperation or divorce.

The liberal divorce act damages the condition of woman because the position of man in Indian society is domination with freedom to remarry while the discorded woman has no choice for second marriage. It is not so easy for a woman to rehabilitate in the society.

At present this opinion with the background of the Indian Society in which 90% people are living in middle age and the position of women is more worst than backward tribe.

CONFIDENTIAL (1) (385)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 185

[Comments/suggestions received from Government of Uttar Pradesh, Lucknow.]

Section 13 of the Hindu Marriage Act, 1955 sets out the grounds for divorce. Similar provisions are contained in section 27 of the Special Marriage Act, 1954. These grounds include adultery, cruelty and desertion. The fact that there has been no resumption of cohabitation or any resumption of conjugal rights between the parties for a period of one year or more after the passing of a decree for judicial separation is also set out in these sections as another ground for divorce.

2. What is proposed through the Marriage Laws (Amendment) Bill, 1981 is to introduce another ground for divorce, namely that the marriage has broken down irretrievably. It is sought to be added that the court shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition. The factum that the parties to the marriage have lived apart for the continuous period of not less than three years as aforesaid shall be sufficient for the court to grant divorce unless it is satisfied on "all the evidence" that the marriage has not broken down irretrievably. This means that the factum of the parties to a marriage having lived apart for the period as aforesaid has not been laid down in an unqualified way. The proof of the alleged grounds of the marriage having broken down irretrievably has been left to the satisfaction of the court which will be dependent on "all the evidence" on the point.

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3. It is also proposed in the said Bill that the petition for divorce by the husband on the ground of irretrievable break-down of marriage may be opposed by the wife on the ground that the dissolution of the marriage will result in grave financial hardship to the wife and in all the circumstances it would be wrong to . dissolve the marriage.

4. The court is also proposed to be empowered in the said Bill not to pass a decree of divorce unless it is satisfied that adequate provision for the main - tenance of children has been made consistenly with financial capacity of the parties to the marriage.

5. The net effect of the proposed amendments, if enacted, wouldbe that the factum of the husband and wife having lived apart for a continuous period of three years or more may serve as a separate ground of divorce subject to the satisfaction of the court of the proof of irretrievable break-down in the entirety of the facts of the case. Further the dissolution of the marriage may be refused if it would result in grave financial hardship to the wife and that adequate provision has not been made for the maintenance of the children.

6. In so far as the state of Uttar Pradesh is concerned, it has already been communicated through replies to the questionnaire that irretrievable breakdown of marriage may be addec as a ground for grant of decree of divorce. This has, however, to be carefully considered that this provision may not be abused by a husband against the wife. It has to be accepted that we are a socially backward society as a whole and it is the women who are generally at a dis- advantage.

7. There may be a variety of reasons underlying the fact of husband and wife living apart; it may broadly voluntary or involuntary, Involuntary separation may in most cases amount to desertion. In its essentials desertion means the intentional permanent forsaking and abondonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations

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of marriage. The term desertion has, for obvious reasons, been not defined by the law or the Courts, there may be large variety of circumstances and modes of life involved on which it may depend whether in a particular set of facts the respondent is guilty or not of the alleged desertion. To quote from the Halsbury's laws of England, (Fourth Eds. Vol. 13, pages 284 and 285): "Desertion is not the withdrawl from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state, the state of things may usually be termed, for short, "the home". There can be desertion without previous cohabitation by the parties or without the marriage having been consumated. The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion."

"Desertion is a course of conduct which exists independently of its duration, but as a fact on which a petition for divorce may be founded it must exist for a continuous period of at least two years immediately preceding the presentation of the petition."

Quoted further from page 287: "For desertion to exist there must be both the factum of physical separation and the <u>animus deserendi</u>, the intention to desert in the sense of bringing cohabitation to an end.".

(308) (4)

8. A de facto separation may take place without there being an animus - deserendi. It may be compulsive, necessitated by variety of circumstances, for business and professional duties, education of children, mutual convenience, imprisonment and the like. There may be some other cases of voluntary separation for the exigencies of life.

9. There may be cases where on account of temperamental disadjustment and other reasons the husband and wife decide to live separately; the husband prepared to maintain the wife and the children and the wife desiring to maintain the marital bond. If the husband is permitted to seek divorce on the ground of separation for a continuous period of over three years, it is obviously the wife who will suffer. Accordingly, some safeguards are necessary to be provided to ensure that the factum of the husband and wife living apart for a period of over three years is not abused by the husband as a ground of irretrievable breakdown of marriage. It can be expressly provided that the factum of the husband and wife having lived apart shall not be considered as a ground of irretrievable breakdown of marriage where:-

(a) they have lived apart by consent or for exigencies of life;

(b) that finding it difficult to live together on account of temperamental disadjustment and for other reasons and have lived apart but the wife desires the bond of wedlock to subsist.

CONFIDENTIAL (5) (389)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 186

(Comments/suggestions received from Shri S.N.Johri, Law Secretary, Government of M.P, Bhopal)

Instead of clause (i) of section 13-C after explanation to clause (vii) add clause (viii) with its explanation to sub-section (1) of section 13 as follows:-

"has, for any reason, other than the aforesaid or alongwith it, in the opinion of the court irretrievably broken down the marital ties between the parties.

Explanation: In this clause irretrievable break down of marriage means living of the spouse together or separately, under such circumstances in which a reasonable man would think it is no more probable to bring back reconciliation of marital relationship between the parties and includes the following cases:-

(i) Whereany of the factors mentioned in section 13(1) or 13(2) is repeated in an aggravated form after a decree passed under section 9 or 10,

(ii) Where the ground on which the decree for judicial separation was obtained, has been super imposed by one or more of the other factors mentioned in sub-section (1) or (2) of section 13."

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If section 13-C is to be separately drafted then the above explanation can be attached to it.

2. Clause (ii) of the proposed section 13-C will not then be necessary because a reasonable man's yardstick for the measurement of the circumstances would be a sufficient guide line for the courts. There appears to be no rationale for prescribing the period of three years' separation as a condition precedent to the presentation of a petition for divorce on the ground of irretrievable breakdown of the marriage.

3. After a decree for judicial separation if cohabitation is not resumed within one year a decree for divorce would follow then why 3 years waiting for divorce on the ground of irretrievable marriage? Why should the lady be made to wait for even one year if the husband is of incureably unsound mind or has ceased to be a Hindu or has deserted for 2 years. Why should the wife wait for 2+3=5 years in tension and frustration. 5 years is big period in the span of a young life.

4. Language of clause (iii) of the proposed section 13-C is not clear in as much as the word "facts" mentioned in sub-section (2) is capable of being differently interpreted. The one interpretation can be that the facts mentioned in sub-section (2) means the fact of living separately for a period of not less than three years and the other interpretation can be that the clause means the fact that a marriage has broken down irretrievably.

5. Clause (iii) of section 13-C is further self contradictory in the sense that if the court is satisfied on evidence that the marriage has broken down irretrievably then the later part of the clause i.e. "unless it is satisfied on all the evidence that the marriage has not broken down irretrievably" will have no meaning. Moreover in the first part of this clause (iii) the words "on the evidence" have been used while in the later part the words "on all the evidence" have been used. The significance of the word "all" is not clear and may create confusion.

6. Since in my opinion in view of the amendment to section 13 proposed by me clause (ii) of section 13-C is not necessary. Hence it follows that the clause (iv) of section 13-C will also become unnnecessary and so will be the case with clause (v).

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7. In clause (v) of the proposed section 13-C the words "same house hold" will have to be defined. Suppose 'A' keeps his wife 'B' in a separate house and regularly visits her and pays the house rent etc., shall she in such a case be deemed to be living in the same house hold or in the separate house hold or in the separate house hold - separate from the house hold of her husband who lives with his parents and other members of the family.

8. The proposed section 13-D appears to be in congruous to section 13-C or section 13 itself. It will be a peculiar situation where an irretrievably broken down marriage or even inspite of the existence of other factors which permit dissolution of marriage such as cruelty, second marriage or the like the court shall abstain from dissolving the marriage simply because the wife would raise an objection of grave financial hardship. Such a plea will be taken in every case and the proceedings for dissolution of marriage will linger on for years together which will again mean a hardship to the petitioner. In any case what will be the grave financial hardship requires to be defined. It will render section 25 as nugatory when in fact section 25 takes care of the situation of grave financial hardship.

PROSPOSED SECTION 13-E

1. Spirit of section 13-E should extend to all cases of divorce/of keeping it confined to the case of irretrievably breaking down of marriage. Moreover, if the passing of decree is held up on this account of deciding the requirement and adequacy for maintenance of the children born out of the marriage then the proceedings might hang on for several months or even years. The party not agreeable to the decree for divorce would always raise objections about the need or about the adequacy for maintenance of the children and the determination of the court on this point would be challenged in higher courts while the decree for divorce will remain held up till the litigation on requirement of adequacy of the provision for maintenance for the children would continue. This provision may be re-drafted as follows:-

instead

"(i) As soon as the decree for divorce is passed and need for grant of alimony to the husband or wife as the case may be is not felt by the court passing the decree, the court while passing the decree shall provisionally make adequate provision for maintenance, education, marriage or other

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requirements of the children born out of the marriage consistent with the financial capacity of the parties to the marriage.

(ii) The provision so made shall be a charge on the property of the divorced husband and wife ratably according to the quantum of the property they hold and the quantum of their income.

(iii) The affected children may if not satisfied with the provisional fixation of provision for maintenance, education, marriage and other requirements, may file a suit for final determination of the same and the amount so finally determined shall be a charge on the property and income of the divorced husband and wife ratably."

2. Grants of share in the inherited and self acquired property

Question No. 9 -

So far as inherited property is concerned, in a Joint Hindu Family the other members start acquiring their share and rights simply by the incidence of birth in that family. In such cases the wife can be given only a part of the share which her husband would inherit and in that case she may be given a right to claim partition of her share. I mean only a part of the share and not half of her husband's share because some part of the share will have to be reserved for the children and other dependents or those who are entitled to claim maintenance in the family.

Legal fiction of the property of one being the property of the other as between the husband and wife can be extended only to the self acquired property and not to the ancestral or inherited property of one or the other because in the matter of acquisition of property by inheritance or succession by one the other parter nad no role to play - the role of being a partner in handling the house hold and other affairs of the family.

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GENERAL

Hindu Law conceives marriage as a sacrament and not as a contract. Divorce by customs was permitted in some backward classes. Their disputes were determined generally by the community panchayats. This parental character of law has been considerably affected by the Hindu Marriage Act, 1955. There was a wave to liberalise divorce which made the legislature to add sections 13-A and B and consented divorce was permitted. The Hon'ble Committee should first be clear on the point whether it wants to continue to proceed towards liberalisation or thinks that the process of liberalisation has in the context of the parental character of law and the conditions obtaining in the illiterate masses or Hindu community has to be stopped.

Generally it is seen that the parents on either side act as catallyetic agents for creating wedge between the husband and the wife because (i) the parents of the bride want to keep the bridegroom under their influence, (ii) because the parents of the bridegroom apprehend that their son has been snatched away from them, (iii) because the mother of the boy feels that her unchallenged authority over the son is being dissolved or (iv) because the bridegroom fails to snatch away financial powers from his mother-in-law.

Therefore, many times if the parents are eliminated from the scene the husband and the wife come together to an understanding by way of reconciliation. Therefore, there should be a provision in the law that as soon as the parties attend each side should nominate a person who is not related or not closely related to the parties and these two persons should sit with the Judge in the camera for attempting reconciliation between the parties. It is only after the failure of the reconciliation that the regular proceedings should be allowed to start.

Wrong doer should have no right to initiate petition for divorce as on the first principles of law a wrong doer cannot be allowed to reap advantage out of his own wrong doing. This will encourage malpractices. People will indulge in adultery with impunity and will make it a ground to seek divorce on the ground of their own adulterous behaviour.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 187

(Comments/suggestions received from Shri S.Banerji, Advocate, Jaimini Bhawan, Kasera Gali, Loha Bazar, Bhopal)

At the end of section 13C(2), the full-stop may be changed to a comma, and the following may be added:

"that the marriage has not consummated for a period of not less than two years immediately preceding the presentation of the petition."

2. The Section 13C (3) be omitted.

3. The Section 13C(4) be renumbered as 13C(3).

4. The Section 13C(5) be renumbered as 13C(4).

5. The following be added as Section 13C(5):-

13C(5) If the court is satisfied, on the evidence, as to the fact that there is no reason to refuse the grant of decree of divorce on grounds mentioned in sub-section (2) read with sub-section (3) and (4) above mentioned, then the burden of proving that the marriage has not broken down irretrievably will lie on the respondent to show that the reasons for living separate, on non-consummation of marriage for the specific period, were not connected with the breakdown of the marriage.

6. In Section 13D(2), after sub-section (a) and (b), the words "and that it would in all circumstances be wrong to dissolve the marriage" may be omitted.

7. At the end of Section 13D(2), the following may be added:-

"The Court shall also make a condition in the decree that the financial arrangements ordered must be made within a period

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specified by the Court, and if the said arrangements are not made within the specified period, the respondent shall be entitled to apply for setting aside the decree, and, on presentation of such an application, the Court may extend the time for making the financial arrangement, or modify the decree in relation to such arrangement, or set asice the decree."

8. After sec. 13E, the following illustrations may be added:-

(1) "If the respondent has been indulging in criminal activities, or anti-national activities, which in the opinion of the Court is sufficiently anti-social, and the petitioner has been living separately on account of the said fact either as a sole ground or as one of the grounds, the petitioner would be entitled to a decree of divorce on the ground that the marriage has broken down irretrievably.

(2) If the petitioner is the wife who has been living separate for the specific period on the ground of neglect of her husband, and the court considers the evidence on neglect sufficient for her to live separate, the petitioner would be entitled to a decree of divorce on the ground that the marriage has broken down irretrievably.

OBJECTS AND REASONS FOR THE SAID PROPOSED AMENDMENT

1. It is very difficult to lay down the circumstances, even generally, under which the Court could decide that a marriage has broken down irretrievably. It is also realised

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that it will be very difficult to prove the circumstances under which a reasonable conclusion could be reached that the marriage has broken down beyond repair. It is, therefore, necessary to raise the said presumption from certain indirect circumstances. It is considered that the condition laid down in sub-section (2) read with sub-section (3) and (4), would be such reasonable circumstances. Similarly, the non-consummation of marriage for a period of two years immediately before the presentation of the petition, reasonably raises a presumption of breakdown of marriage unless it is shown that the non-consumption of marriage was for different reasons. Since desertion requires certain additional ingridients, it may not be possible to obtain a decree of divorce on the grounds of desertion on the mere existence of the said circumstances. It is, therefore, considered reasonable to lay down the burden of proof to rebut the said presumption on the respondent.

2. Though the present Sec. 13C(3) also lays down the burden of proof on the respondent to show that the facts stated at Section 13C(2) were not on account of breakdown of marriage, it is felt that Sec.13C(3) has neither ban happily worded, nor put at the appropriate place. It would more appropriate to renumber it as Section 13C(5), and draft it in the manner Explanation to sec. 9 of the Act has been drafted.

3. Section 13D only comes into operation when the Court is satisfied that the ground of irretrievably break down has been made out against the wife respondent considering all circumstances, then it will be paradoxical to refuse to grant the decree of divorce except on the grounds of financial hardship. Therefore, the provision that it would in all the circumstances be wrong to dissolve the marriage, is to vague and leaves it to the unguided, personal opinion of the judge to decide whether in all the circumstances it would be wrong to dissolve the marriage. Such an arbitrary opinion of the court would orderly vary from person to person.

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4. When, inspite of a clear finding that a marriage has irretrievably broken down, Sec. 13D, provides for dismissal of petition unless adequate financial arrangements are made in the decree in case of financial hardship to respondent, it is very much necessary to ensure that the decree of financial arrangement is complied within a very reasonable time. If the said matter is not adequately made in the decree, there is likelihood of avoiding the compliance of this part of the decree for a very long time. Any penal provisions are recovery through execution proceedings will not ensure the arrangement promptly. Therefore, the decree could only be treated as final when the arrangement ordered is made. This will act as a check on irresponsible persons to remarry before they have actually made the financial arrangements.

5. In cases of irretrievably break down of marriage it is very difficult to either define the expression or lay down the circumstances under which the Court could reasonably decide the matter. Some illustrations may, therefore, be usefully added.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

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MEMORANDUM NO.188

[Comments/suggestions received from Smt. Chandrakala Sahai, Chairman, Bal Mahila Vikas Parishad, Gwalior]

1. To begin with I may state that I do not consider it necessary to make irretrievable break down of marriage as a good ground for grant of a decree of divorce and amend the Hindu Marriage Act 195[illegible] amended upto marriage Laws (Amendment) Act, [illegible] of 1976;

(1) The present Act provides relief to both the parties of a Hindu marriage, with regard to various kind of circumstances of hardships physical, mental, sexual, psychological and other under different sections of the present Act namely

Section 9 - Restitution of Conjugal Rights

Section 10 - Judicial Separation

Section 12 - (2) (a) + (b):

Section 13(1) (ia) and (ib), 13A and 13B.

If the husband and wife feel that they can not carry on as husband and wife the law provides that they can take recourse to various provisions provided by different sections of Hindu Marriage Act, 1955 and the way case Law has developed during the period is a valid proof of the progressive views taken by the judiciary.

Let us first consider the most relevant portion of the proposed amendments in the marriage Laws (amendments) Bill, 1981, namely:

Section 13C (i) (2) + (3) are almost covered by:

Section 13(1) (ib) and the explanation of word 'desertion' and 13A.

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Section 13(1) (ib) provides relief to the sufferer by a decree of Divorce while Section 13A gives an opportunity for reconsideration and reconcilation by both the parties.

The amendment proposed, section 13(c) will encourage the young couples to a hurried action of applying for a decree of divorce on the ground that they can not carry on together and the marriage is is irretrievably broken down and they have agreed to dissolve it by mutual consent.

The 2 question in the questionnaire it self poses an important question what specific grounds can be put forth before the court to enable it to take decision that there is really a irretrievable breakdown of marriage. All the probable circumstances of hardships are covered by Section 9,10, 12,13(1), 13A and 13 B. No exhaustive list of ingredients of breaking down of marriage irretrievably can be given. Each case will be decided on its own merits according to circumstances.

The proviso of exceptional hardship or exceptional depravity to section 14th is the gratest relief already provided by the present Act.

As our Modern conception of Divorce is based on British Law the Ruling of Supreme Court in the case of Lang (v) Lang (D) is very significants (Mulla Principal of Hindu Law 14th Edition of 1974, Page 709).

> "The party who stays behind may be by reason of conduct on his part making it unbearable for a wife with a reasonable self respect or power of endurance to stay with him so that he is the party really responsible for the break down of marriage, in fact he is the deserter. He has deserted her by expelling her, by driving her out. A husband's irritating habits may so get on the wife's nerves that she leaves as a direct consequence of them but she would not be justified in doing so" (This applies to both the partners here their Lod Ship assessed the husband to be the party who stayed behind) Their Lord Ships go on such irritating idiosynerasies are part of the lottery in which every spouse engages on marrying

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and are partner of the marriage for better or wrrse."

Hindu marriage is some thing more there a mere contract. Even with the introduction of "Divorce" in our law it retains ingredients of a (Sanskar). The easy recourse to divorce based on mere fencies and the rigid attitude of either of the partners, engrossed with Western Culture, will altimately destroy the very basis of our culture and religion and lead to total integration of family life which is the foundation of our Society. To day the West has started rethinking on the issue because it is very much dissatisfied with the trends in their societies.

The breaking of home causes great hardship to children, who are left like orphans and destitutes, and ultimately it will creat difficult situation however provisions we may make by enacting various laws.

Not only children, but uneducated or semi educated Hindu women will be the ultimate sufferer, because to be frank, whether we like it or not, marriage is a sort of professior for women which provides them* Average Hindu women cannot stand on her legs. Further with all our progress and modernization, a divorcee/women has no status in Hindu Society.

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* with food, clothes, shelter, security and social status.

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CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 189

[Comments/suggestions received from Smt. Ashalata Pawar, Vice-President, Maratha Mahila Mandal, Gwalior]

The provisions for divorce and to judicial separation by the 1955 Act for Hindus has been a live leave in the direction of the liberalisation of the institution of marriage from conservative orthodox school. The scope of grounds was widened in the year 1976 by the amendment, yet experience shows that the grounds available do not cover a large number of such contingencies which do occur in the real life justifying untieing of the marriage bodage.

2. The spouse may live under the same roof, yet a maladjustment of relations generated by psychological reasons or other wise, completely breakdown the marital relationship, but the case not being covered by any of the existing grounds for divorce, the parties continue to live in great mental agony and torture spoiling their entire life and career ahead.

3. I am aware of atleast two such cases.

A married B. Both are educated upto postgraduation. However, B is synic to some extent. She would always create scenes; when request by A to provide a cup of tea to his frinds arriving on a social call in an evening, B would throw away and break cups instead of serving tea; she invariably disobeys the aged parents of A living as members of Joint family. Strictly speaking, the case may not amount to a case of mental cruelty, yet the gulf initially created by idiocynichracies of B, goes on widening. The result is that the two are living under the same roof, yet wide apart to each other for the last 7 years. The marriage has not been consumated. It is a case of irretrievable breakdown of the marriage.

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A & B were married. Both were educated upto Higher secondary standard. A prosecuted his studies, became a post-graduate, and is a research scholar. B was not agreeable to A's prosecutingthe studies after marriage. Initially she deserted A and went away to her parents. A child was born. A suspected fiedalty of B. Hot letters were exchanged, Enraged A, filed a suit for judicial separation against B, bit failed, because his letters containing charges of unfaithfulness against B, in the opinion of the Court amounted mental cruelty, justifying desertion by B. Though having lost in Court proceedings, A silently entered into a second marriage and has 3 issues therefrom. A and B have been living apart for the last 13 years. B is not agreeable to a divorce. A cannot get the relief for having contacted a second marriage. He himself is to blame. However, it would be a case of irretrievable breakdown. So far as A & B are concerned, even prior A contacted a second marriage. There is no fun in keeping the marriage alive for its namesake and it would be better if ties are permitted to be broken down by divorce so that A and his innocent second wife may atleast live a happy life. Living be also free to choose her future in the way she likes, for she is to blame for initial desertion which culminated into the present circumstances incapable of solution.

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JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981.

MEMORANDUM NO. 190

(Comments/Suggestions received from Prof. Usha Govila, Head of Sociology Deptt., K.R.G. College, Gwalior)

From sociological point of view the existing grounds for divorce are sufficiently enough and reasonably humanitarian. Any further relaxation will prove harmful for the stability of family which is the nuclear institution of society. Everybody knows that divorce is not the solution of the problem of maladjustment. On the other hand divorce does irrepairable damage to the children. Experience of the Western society is a sufficient evidence. The society does not have economic problems or population or health problems, but the main problem is the instability of marriage and problems of adolescents and youth. These problems are a very great challenge and they are just failing to solve them. Despite of all the marriage counselling divorces are increasing there every year.

Divorce does not solve the problem of maladjustment, it rather encourages maladjustment in the society. When divorces are allowed on the ground of maladjustment then from the very beginning there remains a continuous doubt in the minds of couples whether they would be able to adjust with each other or not. And whenever there is a dispute this doubt goes on getting grounds and ultimately leads to maladjustment and divorce. While in the other situation the couple and the family and the society all are sure that once they are married then life long they are husband and wife. Disputes arises, but they are usually incapable to harm the marriage.

Because divorce seriously affects children, hence to save the coming generations from distruction, divorces should not be encouraged. When there is no other way out, then the couples and other make efforts for adjustment and in most of the cases they succeed, only a

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few are left who are not at all ready to live with each other. And these few are those who perhaps will not be able to adjust with anybody. So far the doubtful betterment of these few a process cannot be given way into the society which will seriously harm the coming generations, As a sociologist I am of the opinion that to safeguard future generations from distruction, these few maladjusted couples should be made to sacrifice. We expect and encourage soldiers to sacrifice their lives in battlefield for the betterment of others and for coming generations, then why not a sacrifice from these maladjusted couples.

Cultural history of every society is also evident that in primitive stages every society allows divorces but with the development of culture and civilization it realizes the importance of stability of family for the stability of society. Hence gradually divorces are discouraged till they become totally disallowed. This stand is rather rigid. Now from humanitarian point of view our legislatures have allowed divorce on grounds which are beyond human control, but a new gateway on the ground of maladjustment should not be opened for divorces to begin on irreversible dreadful social process of broken families in the society.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 191

English translation of
/Comments/suggestions received from Dr. Suraj Bhan Darbari, Shri Ram Hospital, Lashkar, Gwalior./

1. Ladies courts should be set to deal with the ladies cases separately. No body should be allowed to enter these courts except the concerned persons. In case of need, Jury may be called to give decisions.

2. The registeration of marriage should be made assential. The list of dowry, presents made to the girls by the relatives at the time of marriage duly signed by both the parties should be submitted to the Registration Office which may be used in case of necessity. This office should have a photo of wife and husband.

3. All the dowry must be the property of the wife by law. Whenever she lives, the above material of dowry should be used by her. There should be no claim of in-laws on the same property. If the girl wants to keep her dowry material at her mothers' residence, she may be allowed to do so. This right should be provided to the girl by the Government through D.M. and Police.

4. The persons who have killed their wives, should not be allowed to marry with an unmarried girl so that they may not be able to have the chance of getting dowry. They should only be allowed to marry with the widows or divorced ladies. There should be some check on such killings. One to this law, the men will have to take care of their wives and the killings of the wives would be reduced.

5. Divorced persons should marry with the divorced women or widows and no with unmarried girls. Similarly the case should be with divorced women. Due to this law the man can not be able to get fresh dowry etc. by contracting new marriage divorcing the present wife, because dowry can be had only in case of marrying an unmarried girl. Due to this, divorces will be reduced and the couple would have to make their adjustments.

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6. If a woman meets a doubtful death i.e. burning, hanging, poisoning, falling in the well, etc. her husband should be allowed to marry with same divorced woman or widow. The defaulters should be prosecuted. Thus the husbands would remain conscious towards their wives and the divorced ladies and widows would be able to have an opportunity to lead a new life.

7. As per existing rules the maintenance allowance can be had by either of the spouse. Since, the girl side entrusts the maintenance of the girl to the husband and the husband also takes the responsibility happily, the wife only should have the right of maintenance and there should be no claim of maintenance by the husband.

8. As per existing rules, the maximum maintenance allowance is Rs. 500/- which is very low amount in view of the rising prices. So this amount should be increased. Those who are getting maintenance less than Rs.500/-, should be given priority in employment. Then only the divorced woman can be able to deal with the rising prices.

9. Several persons waste their salaries in drinking, gambling etc. They do not give sufficient amount to their wives to pull on the House expenditure. In such cases the head of the husband's office should have a right to deduct the half pay of the husband and give it to the wife on the wife's complaints. If the husband is a Railway employee, the Railway passes and medical facilities should also be provided to the wife and children from the husband's office. If the husband hesitates to give the Railway passes to his wife, his wife should have the right to contact her husband's office direct to have these facilities for herself and her children.

Indian women do not want to divorce their husbands even if they are bad character. So to make available these facilities to them, will be a symbol of humanity. This work should be done by a senior officer of the husband's office so that the wife may need not to go to Court.

10. The benefit of doubt should not go to the culprits who are indulged in harassing, raping, murdering the ladies. Such culprits should not be left till the finalisation of the case harassing the women should be treated a severe crime and the culprits should be sentenced at least 10 years of imprisonment alongwith a fine of Rs. 5000/-. And this amount should be given to the lady concerned.

MEMORANDUM NO. 191

मेरे सुझाव :

(1) महिला न्यायालयों की स्थापना महिलाओं के प्रकरणों के लिए की जाए जो अलग रखे जायें । इनमें संबंधित व्यक्तियों के अलावा अन्य का प्रवेश वर्जित हो । आवश्यकता पड़ने पर ज्यूरी बुलाकर भी निर्णय लिये जायें ।

(2) शादियों का रजिस्ट्रेशन कराना अनिवार्य हो । शादी में दिया दान दहेज, रिश्तेदारों द्वारा दी गई लड़की को प्रेजेन्टस की लिस्ट वर और कन्या पक्ष के द्वारा हस्ताक्षर की हुई रजिस्ट्रेशन कार्यालय को दी जाये जो आवश्यकता पड़ने पर काम में आये । पति-पत्नी का एक फोटो भी इस कार्यालय में रहे ।

(3) लड़की की शादी में दिया दान-दहेज का सामान शादी के बाद कानून द्वारा पत्नी के अधिकार की वस्तु है । जहां वह रहे वहीं उसका सामान उसके उपयोग में रहे । उस सामान पर ससुराल के किसी व्यक्ति का अधिकार न रहे । यदि लड़की चाहे तो अपने सामान को नायके में भी छोड़ सके । महिला को यह अधिकार शासन द्वारा दिलाया जाए । जिसे जिलाघोश एवं पुलिस दिलाये ।

(4) जिन पुरुषों ने पत्नी की हत्या की है वह दुबारा अपनी शादी कुवारी कन्या से न कर सकें, विधवा या त्याज्य स्त्री से ही करें ताकि अपनी पत्नी की हत्या कर दूसरी शादी रचाकर पुरुष अच्छा दान-दहेज प्राप्त न कर सकें । उनके इस घृणित कार्य पर रोक लगे । इस कानून के पास होने से पुरुष अपनी पत्नी के प्रति सजग रहेंगे और अमानुषिक रूप से पत्नी की हत्यायें कम होंगी ।

(5) त्याज्य पुरुष दुबारा अपनी शादी त्याज्य या विधवा स्त्री से ही करें । कुंवारी कन्या से न कर सकें । इसी प्रकार त्याज्य स्त्री भी दुबारा अपनी शादी त्याज्य या विधुर पुरुष से कर सकें, कुंवारे पुरुष से न कर सकें । इस कानून के पास होने से पुरुष मौजूदा पत्नी का त्याग कर फिर दुबारा अच्छा दान-दहेज प्राप्त न कर पायेंगे । क्योंकि कुंवारी कन्या से ही शादी करनेमें दान-दहेज की पुरुषों को प्राप्ति होती है । पुरुष और उसकी पत्नी को भविष्य का जीवन अंधकार मय दिखेगा । अतः त्याग करने की घटनायें कम घटेगी । पति-पत्नी दोनों अपने को एडजस्ट करने की पूर्ण चेष्टा करेंगे । त्याग लेने के बाद पुरुष अपनी कुंवारी प्रेमिका से और पत्नी अपने कुंवारे प्रेमी से शादी न कर पायेगी । त्याज्य और विधवा महिलाओं का दुबारा जीवन आबाद हो सकेगा ।

(6) किसी महिला की सदेहपूर्ण मृत्यु जल जाने, फांसी लगने, जहर खाने, कुंए में गिरकर मरने से होती है तो दसका भी पति फिर दुबारा अपनी शादी त्याज्य या विधवा महिला से ही करें कुवारी कन्या से न कर सकें । इस प्रकार पुरुष अपनी पत्नी की सुरक्षा के प्रति सतर्क रहेंगे । त्याज्य और विधवाओं का जीवन दुबारा आबाद हो सकेगा ।

(7) वर्तमान कानून के अनुसार मेन्टीनेंस पति से पत्नी और पत्नी से पति भी प्राप्त कर सकता है । चूंकि शादी में कन्या पक्ष कन्या के जीवन निर्वाह का भार उसके पति को सौंपता है और पति भी उस भार को उठाने का सहर्ष वचन देता है । अत: मेन्टीनेन्स पति से प्राप्त करने की अधिकारिनी पत्नी ही मानी जाए । पत्नी से पति को मेन्टीनेन्स प्राप्त करने का अधिकार न होना चाहिए ।

(8) वर्तमान कानून के अनुसार अधिकतम मेन्टीनेन्स 500 रू0 ही मिल सकता है जो आज की महगाई को देखते हुए बहुत कम है । कम-से-कम मकान किराये के 100 रू0 देने पड़ जाते हैं फिर खाना-कपड़ा, बीमारी पर होने वाला व्यय आदि पर पूर्ण प्रकारविचार कर मेन्टीनेन्स की दर बढ़ाकर निर्धारित किया जाना अति आवश्यक है ।

500 रुपये से कम मेन्टीनेन्स प्राप्त करने वाले को सर्विस करने की भी सुविधा प्रदान की जाये तभी एक त्याज्य को इस महंगाई से निबटना संभव होगा ।

(9) अनेकों पुरुष अपना वेतन शराब पीने, जुआ खेलने, व्यवचार करने आदि में खर्च कर देते हैं । अपनी पत्नी को घर का खर्च चलाने को रुपया नहीं दे पाते । आवश्यकता से कम देते हैं, ऐसी स्थिति में पत्नी की शिकायत पर पति के कार्यालय का मुख्य अधिकारी द्वारा उसके पति के वेतन से आधी तनख्वाह काट कर हर मास उसकी पत्नी को देने का प्रावधान हो । यदि पति रेलवे कर्मचारी है तो रेलवे पास व अन्य मेडिकल की सुविधायें भी उसकी पत्नी तथा उसके बच्चों को पति के कार्यालय द्वारा प्राप्त हों ।

यदि पति रेलवे का पास आदि आनी पत्नी को देने में आना-कानी करे तो उसकी पत्नी अपने पति के कार्यालय से सीधा संपर्क स्थापित कर इन सुविधाओं को अपने एवं बच्चों के लिए प्राप्त कर सके । ऐसा प्रावधान किया जाना अति आवश्यक है जो अभी नहीं है ।

भारतीय नारी अपने व्यवचारी पति तक का भी कभी त्याग करना नहीं चाहती है अत: उसके लिए यह सुविधायें दिलाया जाना

सच्चे मानवता का प्रतीक है । यह कार्य पति के कार्यालय के वरिष्ठ अधिकारी के अधिकार में रहे । कर्मचारी की पत्नी को इसके लिए कोर्ट में न जाना पड़े ।

(10) महिलाओं को सताये जाने, उनकी इज्जत लूटने, हत्या करने आदि के प्रकरणों केमें कोर्ट के अन्दर "शक" का लाभ अभियुक्त को न मिले । ऐसे मुलाजिम को केस के अंत तक जमानत पर न छोड़ा जाये । महिलाओं को सताया जाना एक घोर अपराध माना जाये । कम से कम 10 वर्ष की राजा एवं अर्थ दण्ड 5000 रुपये हो । यह राशि पीड़ित महिलाओं को दी जाये ।

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(410)

CONFIDENTIAL

(26)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 192

(Comments/suggestions received from Shri Shiv Dayal, Retd. Chief Justice, Rameshwar Bhavan, Kotwali, Centre Morar, Gwalior).

Voice is raised, onthe one hand, that Hindu women must be protected from atrocities meted out to them by men, there comes on the other hand, as a thunderbolt a new provision to be introduced in the Hindu Marriage Act to relax the restraints for a decree of divorce. The Bill seeks to add a new section in the Hindu Marriage Act, 1955, which provides that on a petition for the dissolution of marriage by a decree of divorce, such decree may be passed if the Court is satisfied that the parties to the marriage have lived apart for a continuous period of not less than 3 years immediately preceding the presentation of the petition.

By the instrumentality of the proposed provision of a Hindu husband will be able to kick out his wife all ease and comfort by merely living apart and separate from her for a period of 3 years.

The proposed law will be the last nail driven in the coffin of the Hindu sacramental marriage which has been universally held in high esteem because, apart from other values, its concomitants are security in marital life and inherent attachment of children to both the parents as one spiritual entity. Where the law makes security of marital life shaky and there is a constant cloud cast on the certainty of family life of the parents, the children are bound to consider themselves in a precarious state.

Today it is the choice of a Hindu man and woman to have a sacramental marriage under the Hindu law of marriage or to unite with each other in a civil contract of marriage under the Special Marriage Act, 1954. Why then demolish the sacred edifice of the sacramental marriage which has its own specialities and its own values?

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From vedic times the character of a Hindu marriage has been pre-eminently a Sanskar (sacrament), and a sacred indissoluble spiritual union. This is based on Samritis and Nimandhas. The concept of a Hindu sacramental marriage is an eternal union of the soul of the man with the soul of the woman whom he marries, so that they constitute a spiritual entity. At the time of her marriage, she prays to gods for a blessing that her ties with her 'Swami' (husband) may continue not only in this life but also in future life. A divorce was, therefore, beyond contemplation. From the earliest times when the concept of marriage emerged, centuries ago, it was invested with a purely religious meaning. In a nutshell, the Hindu marriage has three objectives:-

(i) Sahdharmacharan: That is jointly carrying out religious ceremonies. It is essential that man must be accompanied by his wife for performing Yajna. During the performance of the marriage sacrament when the father of the bride offers her hand to the bridegroom (Kanyadan), he imposes a condition that in all actions pertaining to Dharam, Arth, and Kaam, he will associate her with himself. At Panigrahan, the bridegroom accepts it and pledges to his wife that he is taking her for Sahdharmacharan." During the course of the Sapatpadi when the bride takes the seventh step, she declares to the bridegroom that in religious ceremonies (hom, Yajna, etc.) she shall assist him and in all actions relating to Dharam, Arth and Kaam she will act according to his wishes. In this way, the bride and the bridegroom become one entity for the purpose of Sahdharmacharan.

(ii) The second object of a Hindu sacramental marriage is Puttr-Utpatti - to produce a son. Accordingly to Hindu concept a man is born with three inherent debts to repay (i) Rishi Rin; (ii) Devn Rin and Pittr Rin. He redeems himself of Rishi Rin through Brahmcharya, that is leading a life of celibacy until his marriage; of Dev Rin, by performance of Yajna; and of Pittr Rin, by producing a son. When a son is born, the son himself comes under Pittr Rin. There is thus a cycle of Pittr Rin.

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(iii) The third and by far a very important objective of sacramental marriage is that the man and the woman control and concentrate their natural sex impulses in each other and by practising restraint and sacrifice, contribute to spiritual development of each other.

Those are the sacred objectives of a Hindu sacramental marriage. Mere sexual pleasure was never the primary aim of a sacramental marriage although it is included per se in the above objectives. It was not the end, but the means. The theory of an original state of promiscurity, once advanced by several sociologists, has already been explored.

Upto the year 1955 A.D., every Hindu had a deep rooted conviction in his mind that the marriage is indissoluble. Whenever differences arose, they were resolved by mutual understanding and tolerance. There was no alternative. 'Adjustment' and 'Patience' were the secrets of longevity of marital life.

NEED FOR DIVORCE

In the course of time, social reformers were awakened to cases where the wife was treated with cruelty by the husband; where the husband indulged in adultery; and where the wife was deserted by the husband. Such cases were exceptional; nevertheless, it was a legitimate demand on the law to provide for relief to the Hindu wife from such calamities. Secondly, in the course of time, mutual tolerance, adjustment and patience decreased as the sense of equality in women developed and went on increasing. To this factor also contributed the fact that the women in higher and middle class families also started earning and contributing to the family income. Thirdly, imitation has been a human weakness. It as put into the thought of Hindu women that if in other countries and other communities, marriage could be dissolved, why should the Hindu marriage continue to be indissoluble?

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HINDU MARRIAGE ACT 1955

Therefore, when Parliament started codification of Hindu Law, and the Hindu Marriage Act 1955 was enacted, provisions for judicial separation and divorce were made in Sections 10 and 13. However, in its wisdom, it struck a balance so that, on the one hand, the wife could be emancipated from the cruel or deserting husband, whereafter she could start her life anew, on the other hand, there were adequate safeguards and restraints so that marriage was not reduced to a civil contract which could be rescinded or revoked, much less unilaterally. The provisions conclusively point to the fact that ample opportunity was also provided for 'adjustment'. The importance of this new measure which was going to hit the fundamental concept, can be gauged by the fact that our late Prime Minister Pandit Jawahar Lal Nehru remained present at the Parliamentary Debates on the Hindu Marriage Bill. Two safeguards out of many were remarkable. Even after a judicial separation, there was no decree for divorce until 2 years elapsed. Thus there was time and opportunity to the parties for second throughts and for reconciliation. Judicial separation was not the final dissolution of marriage while a decree of divorce was. Secondly, if a decree of divorce was passed, there could not be a remarriage within one year of such decree. Therefore, a divorce was applied for only as a necessity based on the grounds such as cruelty, adultery or desertion etc., but not as a manipulation or for the convenience of a remarriage. It was predominantly for giving relief to the wife from the husband's cruelty, desertion etc. that reform in the law became necessary. There may have been very rare and stray cases of cruelty, desertion or adultery committeed by the wife for which the husband had to be relieved. However, in view of the dictates of Article 14 of the Constitution, Section 10 and 13 were so worded as to be equally applicable to the petitioning spouse whether wife or husband.

SECTION 13

Today, under Section 13 of the Hindu Marriage Act, 1955 the husband or the wife can obtain a decree of divorce against the other spouse on any of the following grounds:

(a) Adultery

(b) Cruelty

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(c) Desertion

(d) Conversion to another relition (e) Incurable unsoundness of mind

(f) Virulent and incurable Leprosy

(g) Veneral disease in a communicable form

(h) Renouncement of the World by entering religious order

(i) Not having been heard of as alive for period of 7 years.

SECTION 13-B

Further, by the Amendment Act, 1976, Section 13-B has been introduced which provides for a decree of divorce by mutual consent if the parties have lived apart for one year or more. This provision in our law seems to have imported clause (d) of Section 1(2) of the English Matrimonial Causes Act, 1973. It is, however, noteworthy that under the English law the requirement is that the parties to the marriage must have lived apart for atleast 3 years, while in our law living apart for only one year is enough for a decree. This provision has dealt a tremendous blow on the fundamental concept of a Hindu Marriage and Hindu morality. This Section 13-B of our law has reduced a Hindu marriage to a partnership firm where partners can always dissolve it at their pleasure. In theory, the parties will have to prove that they have lived apart for one year, but in practice even this rigour can be defeated easily. If both the parties to the marriage say before the Court that they have lived apart for one year, although they may not have lived apart even for 2 days, how can it be proved that they have not lived apart for one year? Who will prove it? Who will have an opportunity to prove it? Who will be interested to prove it? No one. On this analysis, if one fine morning, the husband and wife quarrel on a cup of tea, even about a trifling, they both can immediately go to the Court of law for a decree of divorce, on the pretext that they have been living seperately and apart for more than one year. This will be a mockery of the law.

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(415) (31)

Section 13-B will have to stand the test of time. After it has been in force for about 10 years, it will require a survey and review whether it has brought about insecurity in matrimonial life and has made the future of the children precarious and whether it has reduced a sacramental marriage to a contract which can be rescinded or revoked at the pleasure of the parties.

For and Against Section 13-B

It can be argued that the concept of eternal ties is outmoded; performance of Yajna by householders is merely a matter of history; the present generation, in the present scientific age, does not believe in Yajnas; to them, God is a myth; the Atma (soul) is a mere supposition, there is nothing like the creator of creation. The earth and the life on it including man and woman came to be evolved after solidification of gases in the atmosphere the concept of producing a son for spiritual emancipation of Pittr Rin are all Brahmanical conjectures, in reality a married couple indulges in sexual pleasure and conception is a byproduct, in the present age, there is nothing like "Garbhadhan sanskar" where the husband and the wife unite with religious and spiritual objectives.

The answer to these arguments is plain and simple:

The fallacy in these arguments lies in the fact that there have always been, and are, thousands and millions of Hindus who believe in the existence of God, being omnipotent, omnipresent and omnicient and also in the existence of the Atma (soul/spirit), which dwells in the body as its life force; and that a sacramental marriage is a religious and spiritual union. Even the Catholic Christian religion does not subscribe to Divorce. As regards existence of God all religions believe in it. Only a few atheists may not do so. Since there has never been a refrendum, there should be no generalisation that God is a myth, or that the soul is a hypothesis, or that religious or spiritual outlook is a force. All this apart, today it is open to a Hindu man and a Hindu woman who want to be united in matrimonial ties, either to believe in marriage as a sacrament with the objectives above stated and to prefer a sacramental marriage or, alternatively, if they do not believe in sacrament, to become husband and wife under the Special Marriage Act, 1954.

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The two ways being clear and distinct, there is no compulsion for a Hindu man or woman to get married in the sacramental form. Therefore, there is no impedement to their agreein to treat the marriage as a civil contract with the object of sex pleasure and for legalizing the marriage for the purpose of inheritence and legitimacy of children. The Special Marriage Act has its doors wide open for such couples. Then why not spare the sacramental marriage to retain its purity and sacredness, so considered by thousands? The Special Marriage Act (Section 28) provides for divorce by mutual consent. Therefore, those young men and women who wish to make a marriage a matter of convenience or trial, can marry each other under the Special Marriage Act and dissolve the marriage by mutual consent under section 28 after one year whenever they so choose by obtaining a decree of divorce under that Section and have another husband or wife. They need not waste even a day between a divorce and remarriage.

However, the only justification for Section 13-B from a practical point of view is that if the husband and the wife have mutually decided to dissolve their marriage they can take recourse to a collusive proceeding and defeat the law. One of them has to file a petition for divorce alleging against the other, desertion or any other ground under Section 13; and the other spouse (Respondent) to suffer an ex-parte decree, or to appear and admit the allegations as correct. The Court will have to pass a decree. Therefore, instead of unnecessary waste of time, money and energy it is better to have Section 13-B under which both the parties can apply for divorce by mutual consent.

English Law Compared

It appears that the proposed Section 13-C is a catastrophe to be imported from England. The English Matrimonial Causes Act, 1973 came into operation on January 1, 1974, under which the sole "ground" on which a petition for divorce may be presented to the Court by either party to a marriage is that the marriage has "broken down irretrievably". This is sub-Section (1) of Section 1, of that Act. The other sub-sections read as under:-

> "(2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say -

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(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as "two years' separation") and the respondent consents to a decree being granted.

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

"(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can into the facts alleged by the petitioner and into any facts alleged by the respondent.

"(4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to sections 3(3) and 5 below, grant a decree of divorce.

"(5) Every decree of divorce shall not be made absolute before the expiration of six months from its grant unless the High Court by general order from time to time fixes a shorter period, or unless in any particular case the court in which the proceedings are for the time being pending from time to time by special order fixes a shorter period than the period otherwise applicable for the time being by virtue of this subsection."

...9/-

Thus while the English Law says that the only "ground" for divorce is "irretrievable breakdown of marriage.", it enumerate five "facts" for each of which it will be held that the marriage has broken down irretrievably and a decree of divorce will be passed. Therefore, in reality "irretrievable breakdown of marriage" is not a GROUND but a CONCLUSION. The "grounds" for divorce under the English Act are five, that is: (a), (b), (c), (d) and (e) of sub-section (2) of section 1 reproduced above.

Now, these five grounds for divorce under the English Matrimonial Causes Act, 1973 may be compared with the provisions of our Hindu Marriage Act 1955, as amended in 1976.

English Matrimonial Causes Act, 1973	Hindu Marriage Act 1955 (before Amendment of 1976).	Hindu Marriage Act 1955 (as amended by 1976 Amendment).
Ground (a)	Ground(a) to Section 10 (Judicial separation)	Ground ( ) under Section 13 (Divorce) as introduced by 1976 Amendment.
Ground (b)	Ground (b) under Sec. 10	Ground (b) under Sec. 13
Ground (c)	Ground (c) under Sec. 10	Ground (c) under Sec. 13.
Ground (d) (3 years separate living and mutual consent for Divorce).	xx	Ground under Section 13-B (1 year separate living and mutual consent for divorce).
Ground (e) (5 years separate living. No consent of the respondent)	xx	No corresponding provision as yet. [Section 13 C under the proposed Bill]

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(35)

Section 13-C

This Bill now proposes to introduce a new Section 13-C in the Hindu Marriage Act, 1955, (and also corresponding Section 28-A in the Special Marriage Act, 1954). By virtue of this new provision, a decree of divorce will be available on a petition made either by the husband or by the wife on the ground that they have lived apart, that,is, not in the same "house-hold", for a continuous period of not less than 3 years immediately preceding the presentation of the petition and this will tantamount to 'irretrievable breakdown of marriage'. If that becomes a law, it will give a handle to a Hindu husband to kick out his wife by living apart in a separate household (not necessarily in a separate house) for a period of 3 years.

NO JUSTIFICATION FOR SECTION 13-C

1. Sub-section 1(1) of the proposed Section 13-C seeks to add a ground for divorce:-

"the marriage has broken down irretrievably."

It appears that this high sounding expression has been borrowed from the English Matrimonial Causes Act 1973 (Supra). On a close examination of the whole of Section 1 of the English Act, it is abundantly clear that "irretrievable breakdown of marriage" is a CONCLUSION to be drawn on proof of one of the five facts enumberated as (a), (b), (c),(d) and (e) under Sub-section (2). Since the so called "facts" enumerated in clauses (a), (b), (c) and (d) under the English law already exist in sections 13 and 13-B of our law, it must be said that irretrievable breakdown of marriage is already a ground for divorce under the Hindu Marriage Act, 1955.

To put it differently, if the English expression can be borrowed, it must be said that under the Hindu Marriage Act, 1955, as it exists today, irretrievable breakdown of marriage is the sole ground for divorce under the Hindu Marriage Act, 1955 also, as under the English Law.

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2. On this analysis, what the Bill now seeks to introduce is a new ground (or "fact" as called in the English law), that if the husband and the wife have lived apart for a continuous period of atleast 3 years, it will entitle the petitioning spouse to a decree of divorce.

3. The English Matrimonial Causes Act, 1973 came into force on January 1, 1974 and the Hindu Marriage Act, 1955 was amended in 1976 whereby the grounds for judicial separation became grounds for divorce; and all the "facts" (a), (b), (c) and (d) of the English Law became grounds for divorce under our Act. It is evident enough that 'fact' (e) under the English Law, was not acceptable to Parliament in 1976 for being introduced in our Act. It, therefore, demands an explanation what happened during the years between 1976 and February 27, 1981 for which need is being felt for introducing clause (e) also in our law. Need is the mother of Legislation. "The Statement of Objects and Reasons" in the Bill is absolutely silent about any such need; all that is said is that "there is a demand from various quarters" "which expression is beautifully vague; it does not convey any specific thoughts; it does not demonstrate any haruship which is to be remedied. On a little reflection, it can be seen that there is no justification for it in the present state of Hindu Society. It is an erratic attempt to blindly import the English law into the Hindu Marriage Act. Moreover, according to the Statement of Objects and Reasons, the demand is "for making irretrievable breakdown of marriage", a ground for divorce. But THAT is already there, as pointed out above. The mere existence of a corresponding provision in the English Act cannot justify the importing of the catastrophe into the Hindu sacramental marriage. To borrow respectfully the cautioning observations from a recent decision of the Supreme Court:

> "We must not be swept off the feet by the approach made in the Western World which has its own social millieu, its own social mores, its own permissive values and its own code of life."

5. The husband and the wife would live apart for a long period:

(i) because the respondent does not like to live with the petitioning spouse; or

(ii) because the petitioning spouse does not like the respondent any more; or

(iii) because both of them agree that they cannot live together and therefore would live separately.

...12/-

(421) (37)

Now in the third case, the remedy is open to the parties to approach the Court for dissolution of their marriage under Section 13-B. In the first case, the petitioning spouse has the remedy provided under Section 13. Therefore, in essence, what Section 13-C seeks to introduce, is the second case which means, in other words, that the petitioning spouse himself being the deserter acquires a new right by virtue of deserting his wife. This will be abhorent and repugnant to celebrated doctrines of law and natural justice. A party cannot be allowed to take advantage of his own wrong.

6. (i) Where wife deserts the husband, he can get a decree of divorce under Section 13, which is just and reasonable.

(ii) On the contrary, when the husband deserts the wife, he being the deserter himself, will be entitled to apply for divorce under the proposed Section 13-C. This means that desertion will be the foundation for a new right to accrue to the deserter on the expiry of 3 years. Such a proposition must be rejected. Where is the need of conferring upon the deserter (deserting husband) the right to obtain a decree of divorce against the deserted wife?

7. Section 13-C has been so worded as to include the case of a deserting wife claiming divorce against the deserted husband, but that is only for fear of Article 14 of the Constitution, otherwise it is only a hypothetical supposition.

8. Section 13-C will be the last nail driven in the coffin of a sacramental marriage/will be reduced essentially to a civil contract. The proposed amendment which will make marriage a matter of mere convenience, will completely destroy the basic structure of a Hindu family life. The present ideas and ideals of a Hindu family life are not the same as those in the West. Our children have a different behaviour and affection towards the parents. Our parents have a different behaviour and affection towards their children. It is not visible as yet in the Hindu Society that we do not want any continuance of this basic structure of a Hindu family life.

/which has so far been held in high esteem universally. The marriage

9. It will be a catastrophe to be imported from England, and that too after relaxing the rigorous provided in Section 1(2)(e) of the English Act.

...13/-

(422) (38)

10. Sacramental marriage is a sacred union in which both spouses identify with each other to form a single spiritual entity. This magnificent and noble edifice should be allowed to survive.

11. That other countries/communities do not have such concepts or ideals as a sacramental marriage, is not a reason to destroy ours, but it is all the more reason to preserve them.

12. This will make marital life uncertain and insecure. Democles Sword will be hanging on her head constantly and it may lead to a state when the husband would say 'this is my table, while that is my wife's chair; etc.

13. To give recognition to an ultra-modern husband's/ wife's emotions "I do not like my wife anymore, I must get rid of her", or I do not like my husband anymore; I must get rid of him", Article 5 of the Bill which proposes to insert a new Section 28-A in Special Marriage Act, 1954 may be let in, so that those who wish to contract a marriage and at the same time foresee its dissolution whenever convenient, may enter into a marriage under that Act but not come near a sacaramental marriage.

14. Section 13-D in the proposed Bill gives the right to the wife to oppose the petition on the ground of "grave financial hardship" and to prove simultaneously that "in all the circumstances, it would be wrong to dissolve the marriage". Firstly these expressions give an unguided and unbriddled discretion to the Court which would lead to complicated and protracted litigation. Secondly, in view of her natural handicaps, it will, in practice be almost impossible for the wife to fight out the divorce claim against the husband. Thirdly, provision of maintenance or other monetary compensation is no adequate relief to the wife who as a divorcee has a dark future. Above all, to dissolve a marriage is "inherently" wrong, why should burden be placed on the wife to "prove" that it would be so. This is not to defend a wife who is guilty of desertion, in which case a decree of divorce will be passed against her under Section 13 on the ground of her own wrong. Here, under the proposed Section 13-C, it is the deserter who is seeking a decree of divorce against his deserted wife. Vice versa, that is, a wife deserting her husband and claiming divorce against him under Section 13-C will be only a hypothetical supposition. However section 13-C has been so worded as to include that case also, because of Article 14 of the Constitution.

....14/-

(423) (39)

15. The following illustrations may be contemplated, where H is the Husband and W is the wife:

(i) H and W are in employment or carry on business in to different countries and each has a separate household. H does not want her to continue her employment/business in the other country but W persists on it.

(ii) H and W are both in employment or carry on business in two different States in India and, therefore, each has a separate household. H does not want that W should continue in employment/business in another State but should, instead, live with him constantly, but W persists on it.

(iii) H and W both living in the same town, have developed differences in ideas and ideals and H leaves W and lives in a separate household.

(iv) Treatment and behaviour of H towards W is such that she cannot tolerate it and starts living in separate household or with her parents.

(v) H has, for no describeable reason developed dislike for W and starts living in a separate household.

(vi) H has developed intimacy with an other woman whom he wants to marry but since W is living he converts himself into another religion which allows polygamy. Then he marries the other woman and lives in a separate household.

NOW, illustrations (i), (ii) and (iii) are cases of desertion which is a ground for divorce under Section 13. Therefore, in each of these three cases, the petitioning spouse has to prove desertion by the Respondent. For any of these case, the proposed Section 13-C is not required. At the most for removal of doubt, an "explanation" may be added under Section 13 to specifically cover such cases.

In illustration (iv), the wife, being the victim of cruelty, has the remedy of obtaining divorce under Section 13, if she wants. But the husband should have no right to claim a decree of divorce on the ground that they have been living in separate households, when this was in consequence of his own cruelty against her.

....15/-

(424) (40)

Illustration (v) is also a case of desertion by the husband. He should not be entitled to claim a decree of divorce being himself guilty of desertion, while, if she wants, W can obtain a decree of divorce under Section 13.

It is patent enough that in illustration (vi) H should not be given the right (which the proposed Section 13-C gives him) to claim a decree of divorce being himself guilty of immoral conduct.

WHAT IS THE ANSWER TO HER?

While his married life is living, a Hindu husband having fallen in love with another Hindu girl, converts himself into a Muslim and the girl also converts herself into a Muslim; and then there is a marriage between the two converts. Now he has two wives, the latter also, because of lacuna in the law, is a legal marriage. In fact he has the right to marry two more Muslim girls and thus have in all three wives besides the Hindu married wife (the first). After 3 years of living separate from the Hindu wife, he seeks a decree of divorce under the proposed Section 13-C. The Hindu wife says, "He took me as his wife in a sacrament; there has been a spiritual union bwtween us; I have been obedient and faithful to him all these years without a single lapse on my part; he has deserted me, not I; he and he alone shall continue to be my half all my life." She then asks, how can our marriage be forcibly dissolved by a law decree, against my wishes and inspite of my opposition? Why should I be forcibly stamped and insulted as a 'divorcee' under a law decree? Why should I be forcibly deprived of the reputed surname of my husband's family by a decree of divorce?" These are some of the questions which she legitimately asks. They have to be answered. There is no answer.

LOOPHOLES

1. Apart from there being no justification for Section 13-C, the loopholes and unbridled discretion under Section 13-D and 13-E will give rise to unnecessary and unwholesome litigation.

....16/-

(425) (41)

2. In the name of reform for the benefit of the Hindu women, Section 13-C will prove disasterous to her in its practical exercise and her life as a divorce would be most miserable. Section 13-C being a step ahead of Section 13-B will completely demolish the high edifice of sacramental marriage and the Hindu family life which is envied by other communities.

3. Experience bears out that loopholes degrade the law to a mockery. It will be seen that whereas the law prohibits bigamy, a Hindu husband can have even three more legal wives besides his Hindu married wife living by converting himself into another religion which allows polygamy. This obvious blunder in the law can easily be rectified by deleting the words "between two Hindus" in Section 17 of the Hindu Marriage Act.

CONCLUSIONS

1. To insert the proposed Section 13-C in the Hindu Marriage Act, 1955, is quite unnecessary because no case of injury or hardship has been made out which is needed or required to be redressed. When in the case of desertion, the deserted party can obtain a decree of divorce, the requirement of redressing the wrong is satisfied. There is no need of conferring upon a deserter (deserting husband) to obtain a decree of divorce against the deserted wife.

2. Article 2 of the Bill which seeks to introduce Sections 13-C, 13-D and 13-E, vide Articles 3 and 4 of the Bill, should not be allowed any entry in the Hindu Marriage Act, 1955.

3. Section 13-C is repugnant to the fundamental doctrines of law and natural justice, as it confers upon a deserter (husband), a new right against his deserted wife.

4. The institution of sacramental marriage must be allowed to survive by rejecting Articles 2, 3 and 4 of the Bill.

5. In Section 17 of the Hindu Marriage Act, 1955, the words "between two Hindus" should be deleted.

6. If at all, Articles 5 and 6 of the Bill which seek to add Section 28-A in the Special Marriage Act, 1954 may be passed.

CONFIDENTIAL (1) 426

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 193

[Comments/suggestions received from Shri Moti Babu, Retd. District Judge, Nirala Nagar, Lucknow]

Basic Principles: By enacting the Hindu Marriage Act and including therein the provisions regarding judicial separation and divorce, we have given a go-bye to the sacramental concept of marriage. Not only that, in the matter of divorce, we have already become more liberal than the British. A comparison of section 13 of the Hindu Marriage Act, 1973, will bear it out. Still, when dealing with divorce, we are often influenced by old ideas which express themselves in the garb of concepts of hardship to one party or the other. Consequently in the Bill there is proposal to put so many checks that the very purpose of the law will be defeated.

2. Delay and controversy to be avoided: The purpose of divorce law is substantially frustrated also if it takes a long time to complete the proceedings themselves. Divorce is of little avail if it does not enable the party to enter into a new alliance and begin anew. What is the use of divorce if one gets it when he/she is too old to remarry. A study of litigation on the subject will indicate that sometimes it takes a decade or more to have a final decree of divorce. Because of huge arrears and dilatory processes the original decree itself takes a long time. And then the provisions regarding first and second appeals, revisions, and writ petitions and then appeals to Supreme Court enable a stubborn litigant to consume any amount of time in the proceedings themselves. In the long [illegible] litigation the antagonism only increases and more often than not the plight of the children is simply pitiable, leave part the psychological impact of the proceedings on their innocent minds. If, therefore, an exist it sought to be opened in the marital apartment, let us not create a situation in which most of the time is spent in only struggling at the exit.

...2/-

(427) (2)

3. Provisions should be clear and procedure quick:
In that view of the matter, the provisions on the subject have to be such that litigation may end in the shortest possible time. This objective we can achieve by making suitable provisions in the substantive as well as procedural part of the law. In the former part, the law may be definite and least susceptible to diversity of interpretation. The criteria may, as far as possible, be capable of objective assessment and least open to interpretational controversy. There is already a tendency towards subjectivity in the judgments particularly at the higher level. If the law is vague the litigation will be reduced to mere gambling, the result depending mostly on the views of the judge concerned. Therefore, it is suggested that law should, as far as possible, be definite and the norms be mostly capable of objective assessment. The procedure should be brief and quick and it may not be a case of running from pillar to post.

4. The Bill too vague, dilatory and open to controversy:

Now we come to the provisions of the Bill itself. Proposed section 13C provides for dissolution of marriage on the vague ground of marriage having broken down irretrievably. There is no definition of this ground., and the interpretation may differ from judge to judge. In the English Matrimonial Causes Act, the expression has been illustrated in section 1(2) and those illustrations give the expression comparative certainty of meaning. The Bill leaves the expression in a vacuum with no indication on its meaning.

5. Sub-section (2) of the proposed section 13C gives an essential circumstances for coming to the conclusion that the marriage has broken down irretrievably, and that is of living apart for a continuous period of not less than 3 years. Then sub-section (3) adds to the importance of the said ground by shifting the burden of proof on the respondent. If the petitioner is able to prove that he/she has been living separately for not less than 3 years he/she gets divorce unless the respondent proves any circumstance to show that marriage has not broken down irretrievably. What such circumstance should be like, is again left for guess-work.

6. While providing for divorce on the ground that marriage has broken down irretrievably, so many ifs and buts have been added thereto, that the provision will only result in litigation rather than relief. First in

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428 (3)

proposed section 13C (2) there is an essential requirement of 3 years separate residence. In India wives are generally economically dependant on their husbands. It is much unlike western countries, where wives are economically independent. Resultantly while their separate residence starts normally with the beginning of the quarrel, an Indian wife leaves the roof of her husband only as the last resort. All the advice to her is to anyhow carry on. Many of them may not even have means to subsist for 3 years. This requirement will, therefore, work undue hardship in the case of a wife petitioning against the husband.

7. Further restrictions are placed by the proposed section 13D. It seems to be based on section 5 of the Matrimonial Causes Act, 1973. The English provision applies in all the cases; but the proposed provision applies only in the case of petition by wife. It may be noticed that the provision authorises rejection of petition even in a case where the new ground is made out, if it would in all the circumstances be wrong to dissolve the marriage. If the circumstances are such that it would be wrong to dissolve the marriage, there should be no dissolution, be at the instance of the wife or at the instance of the husband.

8. The said section provides for refusal of dissolution also on the ground of financial hardship to the wife. Theoretically, there may be nothing objectionable. But in practice this is redundant. There are already provisions in the Hindu Marriage Act vide sections 24 and 25 which can take care of financial interests of the wife. Logically also there appears no good reason for this additional financial safe-guard in a case of dissolution on the ground of failure of marriage but not on other grounds like the wife suffering from leprosy or a venereal disease.

9. The expression "all the circumstances" is very vague and there appears to be no logic in applying it to the case of dissolution of marriage onthe new ground only and not in other cases. If the restriction of taking into consideration of all the circumstances of the case is placed, it should be there for every round of dissolution. A mere English precedent (the reason thereof is not clear to me) may not justify imitating the provision in this modified form.

...4/-

10. The proposed section 13-E puts an additional restrictions by providing that the divorce shall be refused unless adequate provision is made for the children. This will cause undue hardship in case of a petition by the wife. Normally the maintenance of children would be the responsibility of the father. He would very much refrain from making such adequate provision so as to delay the relief to the petitioner. Under section 26 of the Hindu Marriage Act, during the pendency of the proceedings only interim orders can be passed by the Court. Provision for regular maintenance can be made only in the decree. So before the decree, the Court will not be able to compel any arrangements. Thus the proposed provision will work very harshly on a wife petitioner. In fact the provisions of the Hindu Marriage Act should suffice for the care of children. Logically if they are sufficient, in case of divorce on other grounds, there is no reason why they should not be considered sufficient in case of divorce on the proposed new ground.

11. Clause 4 of the Bill amends section 23 of the Hindu Marriage Act. That section provides that a party will not be allowed to take advantage of his or her own wrong. Clause 4 will make this inapplicable in the case of divorce on the ground of failure of marriage. We have to be clear that we are allowing dissolution even when the fault lies with the petitioner.

12. Drafting comment:- Proposed section 13C(4) - This sub-section is an adaptation of section 2(5) of the Matrimonial Causes Act. In the process of adaptation some discripancies appear to have crept in. First, in the expression "not exceeding three months in all", the words "in all" are uncalled for. In the English Act allowance was made for two or more periods also. But in the proposed draft allowance has been made only for one period. Inthe circumstance, there is no occasion here to use the words "in all". Secondly, in clause "but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart", the word "other" is misleading. In the English Act the word "other" is not there. If we use that word, here, it will simply cause confusion. In so far as the one period for which allowance has been made is concerned it may be interpreted to be part of the period of separate residence. It will be illogical to count period of joint residence as period of separate residence. On the other hand, a controversy may arise as to what is that other period which will not count. Therefore, the word "other" should be deleted following the English pattern.

...5/-

SUGGESTIONS

13. Grounds of Divorce: In my opinion two new grounds of divorce may be recognised viz. (I) three years separate residence, without the express or implied consent of the other party, and (2) respondent behaving in such a way that the petitioner cannot reasonably be expected to live with the respondent. Three years continuous residence without the consent of the other party will itself indicate that the marriage has broken down and the two cannot happily live together. We need not go into the question as to who is responsible for the situation. This will be an objective test and could be decided without much controversy. As tothe second ground it is on the lines of section I(2) (b) of the Matrimonial Causes Act. It will cover cases of mental incompatibility or instances of misconduct like flirting or other ignoble behaviour not amounting to adultery. Under the present law, if a husband flirts with other girls but does not commit adultery or the wife goes about flirting with the outsiders, divorce cannot cannot be allowed. But obviously such wife or husband would be intolerable and the other party should be allowed to divorce on that ground. Other cases of hardships could also be covered by this clause.

14. Procedure:- As to the procedure, it is suggested that no judicial officer of less than 10 years standing should be allowed to try matrimonial cases. That will ensure requisite experience and mature consideration on the part of the Judicial Officer. Secondly, first appeal should lie to the High Court. That will save the time spent in second appeal, Revision and Writ Petitions.

CONFIDENTIAL (6)

(Original in Hindi)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(ENGLISH TRANSLATION)

MEMORANDUM NO. 194

(Comments/suggestions received from Smt. Urmila Prasad and Smt. Sushila Sahai, Bihar Mahila Samaj, Patna.)

This amendment does not define irretrievable breakdown of marriage. However, section 13C(2) clearly indicates that if the spouses have lived apart for three years that would be considered as irretreievable breakdown of marriage. This has following draw backs:

1. Three years is a long period. It may be easy for a husband but for the wife it is not easy to live without any security, financial means and employment.

2. Section 13e(5) declares if the spouses are not living in the same house that means they are living separately. It is very difficult for a wife to find a house and live alone without any financial means. Therefore, living in separate houses only should not be given importance.

3. The main problem in our country is a case in the court takes many years. There should be a provision in the law that court cases should be decided within three months of issuing Notice.

4. If the husband has applied for a divorce, he should deposit a sum of rupees five hundred towards the maintenance of his wife.

5. Family courts should be constituted to find a solution for marital and family problems. This court should consist a judge of the High Court, experts of marriage problems and social workers preferably women. Proceedings should be held in camera. The petitioner should be given a lawyer, in the Lower Courts, to prove his points.

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(452) (7)

MEMORANDUM NO. 194

बिहार महिला समाज

अदमकुआं, पटना-3

दिनांक : 5-2-1983

माननीय संसदीय समिति के सदस्यगण,

इस संशोधन कानून में मैरिज के इरिटरीवियेबल टूट जाने की कोई परिभाषा नहीं दी गई है। यद्यपि धारा 13इ(2) में यह कहा गया है कि तीन वर्षों का एक दूसरे से अलग रहना साबित होने पर ही विवाह के इरिटरीवियेबल टूट जाना माना जाएगा। इसमें निम्नलिखित खामियां हैं -

1- तीन साल की अवधि बहुतअधिक है। पुरुषों के लिए तीन साल की अवधि पत्नी से अलग बिताना कठिन नहीं है, किन्तु पत्नी के लिए तीन साल अलग बिताना बहुत ही कठिन है। उसे सुरक्षानहीं, आर्थिक साधन नहीं, रोजगार नहीं, समय काटने के लिए भी कोई साधन नहीं। इस लम्बे अरसे में वह कुढ़ कुढ़ कर पागल हो जाएगी।

2. धारा 13बि(5) में कहा गया है कि जोर पति-पत्नी एक ही घर या परिवार में नहीं रह रहे हैं, तो उनका अलग रहना माना जाएगा। यह उचित नहीं। ऐसे बहुत से उदाहरण हैं कि एक ही परिवार में रह कर दोनों में कोई सम्बन्ध नहीं रहता, एक दूसरे से बातचीत तक नहीं होती। पत्नी के लिए अलग रहना दुःश्वार है। वह एक अलग मकान ढूंढे, अलग रहने के लिए आर्थिक साधन जुटाए, यह सम्भव नहीं होता। इसलिए अलग परिवार, या अलग घर में रहना जरूरी नहीं माना जाना चाहिए।

3- हमारे देश में सबसे बड़ी कठिनाई है कि अदालत में मुकदमा दायर होने के बाद उसे निपटाने में बरसों लग जाते हैं। अदालतों में खर्च बहुत अधिक होता है। इनका निदान जरूरी है। कानून में प्रावधान होना चाहिए कि दूसरे पक्ष पर नोटिस होने के तीन महीने के अन्दर मुकदमें का निपटारा हो जाए।

4- संशोधन बिल में मुकदमों के लम्बित रहने की अवधि में पत्नी को मुकदमें का खर्च और उसके भरण पोषण की जिम्मेदारी पति पर होनी चाहिए।

(8) (433)

यदि पति तलाक के लिए प्रतिवेदन दे तो उसके लिए पत्नी को मुकदमा लड़ने के लिए खर्च के रूप में प्रतिवेदन के साथ ही कम से कम पांच सौ रुपये (500 रु०) जमा करना जरूरी कर दिया जाए और अगर पत्नी इस लायक नहीं हो कि अपना भरण पोषण कर सके, तो उसके मुकदमें में हाजिर होने के साथ ही, भरण पोषण के लिए उचित रकम पति से मिलना आरम्भ हो जाना चाहिए।

5- पारिवारिक न्यायालय (फैमिली कोर्ट) का गठन होना चाहिए। हमारे देश में वैवाहिक और पारिवारिक समस्याओं से सम्बन्धित न्यायालय नहीं हैं। वर्तमान न्यायालयों में वैवाहिक, पारिवारिक समस्याओं संबंधी, आर्थिक पिछड़ेपन आदि को कम महत्व देते हैं।

फैमिली कोर्ट का गठन, उच्च न्यायालय के न्यायाधीश, पारिवारिक वैवाहिक सम्बन्धों के विशेषज्ञ, सामाजिक कार्यकर्ताओं को मिला कर किया जाए। जिनमें महिलाएं अवश्य हों। कोर्ट बन्द कमरे में हो। लोअर कोर्ट में आवेदक को अपनी बात ठीक से रखने के लिए एविडेन्स आदि के लिए प्रूफ सिद्ध करने के लिए वकील दिये जाएं, ताकि वह उसे अपनी बातों को कोर्ट के सामने रखने में मदद मिले। अन्य देशों के पारिवारिक न्यायालय की तरह फैमिली कोर्ट के गठन से यहां भी कम समय में अधिक उचित निर्णय लिया जा सकेगा।

उर्मिला प्रसाद,
अध्यक्ष
बिहार महिला समाज

सुशीला सहाय,
सहायक सचिव,
बि०म०स०

(9) (434)

CONFIDENTIAL
(ORIGINAL RECEIVED IN HINDI)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

(ENGLISH TRANSLATION)

MEMORANDUM NO. 195

(Comments/suggestions received from Shri Trilok Chand Singhal, Advocate & Notary, Madhav College, Gwalior)

As we all know in the Indian marriage system, women is given no importance, therefore in the proposed amendments to the Act special protection should be provided to women.

In the Indian society divorce is taken whether there is a question of bringing less dowy and such other reasons. The wife is deserted or insulted if she does not bring enough dowry. Some husbands force their wives to live apart, so that a ground for irretrievable breakdown of marriage could be made.

An amendment should be made in section 24 of the Hindu Marriage Act so that a wife can get maintenance from her husband, as per his social status. A uniform law should be made for every religion and section 125 of Criminal Procedure Code should also be amended. In the proposed law women should be given every protection.

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(435) (10)

MEMORANDUM NO. 195

आप सब जानते हैं कि भारतीय वातावरण में विवाह संस्था में सबसे कमजोर पक्ष स्त्री का ही है। अतः किसी भी संशोधन अथवा अधिनियम में नियमों का निर्माण करते समय स्त्री की सुरक्षा (प्रोटेक्शन) पर विचार करना अनिवार्य है।

आप आमतौर पर देखने को मिलता है कि स्त्रियों पर बलात्कार, विवाहित स्त्रियों को दहेज की असंतुष्टि के कारण जला देना या स्त्रियों का बिला वजह परित्याग कर देना साधारण बातें हो गई हैं।

भारतीय संस्कृति में विशेषतः हिन्दुओं में विवाह एक संस्कार होकर स्त्री को गृहलक्ष्मी का सम्बोधन व सम्मान दिया गया है और स्त्रियों की गृहस्थाश्रम में अत्यन्त ही सम्मानजनक व्यवस्था है। स्त्रियाँ पति को जन्म जन्मान्तर का संयोग व संस्कार मानकर परमेश्वर के रूप में पूजा करती हैं। लेकिन आजकल कालान्तर में हुई घटनाओं एवं भारतीय समाज व जीवन दर्शन पर पाश्चात्य का रंग आने से जिस प्रकार पश्चिम देशों में स्त्रियों को एक भोग की वस्तु समझा जाता है अथवा केवल शारीरिक सुख के लिये विवाह को महत्व दिया गया है वैसा ही भारतीय जनमानस का सोचने का ढंग बन रहा है और विवाह दर्शन के महत्व का विलोप हो रहा है।

विवाह-विच्छेद पर विचार भी पाश्चात्य देशों का एक विचार ही है भारतीय परिवेश में विवाह विच्छेद विशेष कारणों पर न होकर दहेज आदि छोटे-छोटे कारणों पर होते हैं। आये दिन दहेज की मान मनानीपूर्ण प्राप्ति न होने पर पत्नी का परित्याग कर देना या अन्य तौर पर पत्नी को प्रताड़ित करना अपमानित करना आदि-आदि घटनायें देखने को मिलती हैं।

कई व्यक्ति अपनी पत्नी को उपरोक्त कारण से लड़की के माता पिता के घर रहने को मजबूर करते हैं और इस कारण यदि विवाह विच्छेद को असमाधेय के आधार पर बल दिया जाता है तो वह गलत होगा बल्कि स्त्रीधन को प्रोत्साहित कर दोनों पक्षों को एक साथ रहने हेतु बल दिया जाना चाहिये।

(11) (436)

हिन्दू विवाह अधिनियम की धारा 24 में इस पद जोड़ा जाकर स्त्री को वांछित सम्मान अथवा स्नेह न मिलने पर अलग रहकर अपने पति से भरण पोषण की राशि प्राप्त करने का अधिकार होना चाहिये । उक्त राशि तय होने तक इस निश्चित मिनिमम आंशिक राशि अधिनियम द्वारा निश्चित की जानी चाहिये । जो स्त्री और पति के सामाजिक स्तर में देखते हुये बढ़ाई जाना चाहिये । यह राशि कम से कम 100 रु० मासिक हो सकती है ।

यह सिद्धि भार पुरुष पर होना चाहिये कि स्त्री क्योंकर यह राशि प्राप्त नहीं कर सकती है ।

इस समान सूनिफार्म कानून सभी धर्मों व समुदायों के लिये होना चाहिये ।

क्रिमिनल प्रोसीजिर कोड की धारा 125 में भी इस प्रकार का संशोधन अनिवार्य है ।

अतएव संशोधन अधिनियम में प्रस्तावित संशोधन की आवश्यकता न होते हुए सम्पूर्ण भारतीय स्त्री पक्ष के प्रोटेक्शन हेतु समुचित व्यवस्था होना चाहिये ताकि दिन प्रतिदिन की स्त्रियों पर अत्याचार की घटनाओं में कमी आये ।

दिनांक 4-1-83

हस्ताक्षर
त्रिलोक चन्द सिंहल
एडवोकेट एवं नोटरी
विधि व्याख्याता
माधव माधव महाविद्यालय,
ग्वालियर

(12) CONFIDENTIAL

(ORIGINAL IN HINDI)

(ENGLISH TRANSLATION)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 196

(Comments/suggestions received from Shri Missi Lal, Sarafa Bazar, Gwalior)

According to Hindu Marriage Act marriageable age for a boy is 21 years and for a girl is 18 years. This has many draw backs which should be amended as follows:-

(1) There is a possibility that by this age 21 years and 18 years respectively the boys and girls can become morally corrupt, which is harmful to the nation.

(2) If the parents are old and they die before their children get married then the life of those children can get spoiled.

(3) In such cases parents should get permission for an early marriage of their children from the concerned authority or the court.

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(438)

(13)

MEMORANDUM NO. 106

श्रीमान अध्यक्ष महोदय,

विवाह कानून संशोधन समिति,

आज उपस्थित ग्वालियर

विषय : हिन्दू विवाह कानून में बुराइयों में सुधार के संबंध में ।

महोदय,

सेवा में निवेदन है कि वर्तमान हिन्दू विवाह कानून में लड़के की उम्र 21 साल व लड़की की उम्र 18 साल विवाहयोग्य है । परन्तु इसमें भारी बुराई है, जो नीचे लिखे अनुसार दूर की जाना अति आवश्यक है । इस मानवीय समस्या पर आज तक किसी ने ध्यान नहीं दिया ।

(1) 21 साल व 18 साल की उम्र तक लड़के व लड़कियों का चरित्र दूषित होने की संभावना बनी रहती है, जो कि राष्ट्र के लिये घात है ।

(2) अगर किसी लड़के अथवा लड़की के पिता माता वृद्ध हैं और लड़के लड़की का विवाह होने तक देहान्त हो जाता है तो ऐसी हालत में लड़के लड़की का जीवन बर्बाद होना अवश्यंभावी है ।

(3) ऐसी सूरत में वृद्ध माता पिता को लिये शासन से अथवा न्यायालय से स्वीकृति लेकर छोटी उम्र में ही विवाह कर देने की छूट दी जाना अति आवश्यक है ।

आशा है, उपरोक्त सुझाव पर श्रीमान महानुभावों द्वारा गंभीरता से विचार करके वृद्ध माता पिता को विवाह उम्र संबंधी नियम से छूट देकर मानवीय सेवा का लाभ प्राप्त करेंगे ।

विनीत,

हस्ताक्षर [illegible]

सराफा बाजार,

लश्कर, ग्वालियर

(14) CONFIDENTIAL
(ORIGINAL IN HINDI)

(ENGLISH TRANSLATION)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981

MEMORANDUM NO. 197

(Comments/suggestions received from Smt. Kanta Upadhya, Treasurer Nari Seva Sangh, Murar, Gwalior).

Marriage is the most important religious ceremony of the Indian Society. How much part a religious ceremony plays in moulding the life of a man is often stressed by psychologist, physiologists and sociologists. Therefore it is not proper to consider marriage as sex-relationship alone like west. If divorce is /be permitted the marriage has to be taken out from the class of religious ceremonies (samskaras). Agreement is made and broken but not a sacrament. Marriage is a symbol of the greatness and poise of the Indian Society. The failure of marriage denotes that the society is disintegrating. This itself signifies a deformity or disease. Grant of divorce means to make the society a victim of imbalance. A sex-tormented human society would no longer tolerate a system that would make a permanent marriage relationship. Animal world and the western countries are living examples of this. Distortion caused by birth or environment or both are the cause of real malady. Divorce is a malady/not cure. The basis of theories propounded by Frend is the result of a Study which is basically animal. There is no place for sex in marriage. The main objective is creation. The mutual sex-relation between married couples is definitely welcome but sex-relation alone is not the objective of marriage. Such relations have been maintained and will be maintained with more than one. But marriage is with one alone. Therefore through divorce woman and man both will encourage sex and there will be frequent marriages and divorces. Hence divorce should not be equated with marriage.

(440) (15)

MEMORANDUM NO. 197

विवाह भारतीय समाज को अंगीकृत संस्कारों में सबसे प्रमुख व महत्वपूर्ण है । संस्कार का मनुष्य निर्माण में कितना हाथ होता है यह मनोवैज्ञानिक, शरीर वैज्ञानिक एवं समाज वैज्ञानिक बताते रहे हैं । अत: विवाह को पाश्चात्य समझौता सम्बन्ध (सैक्स रिलेशन) के समानान्तर रखना अनुचित है । यदि यहां तलाक को सुलभ बनाना है तो विवाह को संस्कार की श्रेणी से अलग करना होगा । समझौता होता है टूटता भी है । संस्कार नहीं । विवाह भारतीय समाज की श्रेष्ठता व सामंजस्यपूर्ण अवस्था है । वैवाहिक संस्कार की असफलता का अभिप्राय है समाज में स्थायित्व एवं सामंजस्य टूट रहा है । जो कि स्वयं में एक विकृति है, रोग है । तलाक की सुविधा देने का अभिप्राय है समाज को असंतुलन का रोगी बनाना । सैक्स से उत्प्रेरित मनुष्य समाज में विवाह को स्थायी बन्धन बनाने वाली व्यवस्था कभी भी टिक नहीं सकेगी । पशु पक्षी जगत व पाश्चात्य देश इसके जीते जागते प्रमाण हैं । जन्मजात या वातावरण या दोनों ही से उत्पन्न विकृतियों ही असली कलह का कारण हैं । तलाक स्वयं में एक रोग है निदान नहीं । फ्रायड का सिद्धांत जो इसकी भूमिका में है उस समाज के अध्ययन का परिणाम है जो पशुता है । विवाह में सैक्स को कोई स्थान नहीं है । संतानोत्पत्ति ही प्रमुख ध्येय है । विवाहित पति पत्नी में आपसी सैक्स रिलेशन रहें तो सुविधाजनक अवश्य है । सैक्स रिलेशन ही विवाह का सर्टिफिकेट नहीं । ये सम्बन्ध एक से अधिक से रखे जाते रहे हैं और रहेंगे । परन्तु विवाह एक से ही होता है । अत: तलाक के माध्यम से स्त्री और पुरुष दोनों ही अपने अपने क्षेत्र में सैक्स को बढ़ावा देंगे और रोज विवाह और तलाक होंगे । तलाक को विवाह के समानान्तर न बनाया जाय ।

धन्यवाद ।

श्रीमती कान्ता उपाध्याय
कोषाध्यक्ष नारी सेवा संघ मुरार
ग्वालियर मुरार, पिन- 474006

(441)

(16)

CONFIDENTIAL

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

MEMORANDUM NO. 198

[Comments/suggestions received from Shri Bhagwati Prasad Singhal, Advocate and Notary, Gwalior.]

Amendments in Marriage Law

A. Hindu Marriage Act, 1955 be amended as follows:-

Present Section 13 A and 13 B be deleted substituted by following Section 13.

13. Divorce on breakdown of marriage.

(1) Subject to other provision contained in this Act any marriage, solemnized whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the marriage has broken down irretrievably.

(2) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievaly unless the petitioner satisfies the Court on one or more of the following facts i.e. to say that

(a) that, the respondent has committed adultery or after the solemnisation of the marriage had voluntary intercourse with any person other than his or her spouse and that the petitioner finds it intolerable to live with the respondent, or

(b) that the respondent has been after the solemnisation of the marriage treated the petitioner with cruelty or has behaved with the petitioner in such a way that the petitioner can not reasonably be expected to live with the respondent.

(c) that the respondent has deserted the petition for a continuous period of not less than two years preceeding the presentation of the petition.

...2/-

(442) (17)

Explanation: the expression "deserted" and "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of the such party, and includes the willful neglect of the petitioner by the other party to the marriage and its grammatical variation and cognete expression shall be construed accordingly.

(d) that the respondent has ceased to be a Hindu by conversion to another religion.

(e) that, the respondent has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. Explanation:- In this clause.

(a) The expression "Mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes Schizophenia;

(b) the expression "psychopathic disorder" means a persistant disorder or disability of mind (whether or not including sub normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it require or is suspectible to medical treatment.

(f) that the respondent has been suffering from a virulent and incurable form of Leprosy.

(g) that the respondent has been suffering from a venereal disease in a communicable form.

(h) that the respondent has renounced the world by entering any religious order.

(i) that the resondent has not been heard of or being alive for a period of seven years or more by those person who would naturally have heard of it, had that party been alive.

...3/-

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(j) that the parties to the marriage have apart that there has been no cohabitation between them for a continuous of at least five years, immediately preceding the presentation of the petition and the respondent consents to a decree being granted.

(k) that the parties to the marriage have lived apart and there has been no cohabitation between them for a continuous period of at least seven years, immediately preceding the presentation of the petition.

(l) that there has been no resumption of cohabitation between the parties for the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties.

(m) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(n) that the previous wife of the husband is alive on the date of presentation of the petition married to him prior to commencement of this Act.

(o) that the husband has since the solemnisation of the marriage with her been guilty of rape, sodomy or bestatality.

(p) that the respondent has been guilty of not following obeying or carrying out the order passed against him or her in a suit under section 18 of the Hindu Adoption and maintenance Act, 1956 or in a proceeding under section 125 of the Code of Criminal Procedure. 1973 and/or the cohabitation between the parties has not been resumed for one year or upwards since the passing of such order.

(q) that the marriage was solemnised before the attainment of the age of fifteen years and that it has been repudiated before attaining the marriage age fixed by the law.

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3. In considering whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any period or periods not exceeding six months in all and whether cohabitation took place or not during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage live apart.

4. A husband and wife shall be treated as living apart shall be construed as reference to their living unless they are living with each other in the same household and reference in this section to the parties to a marriage living with each other in the same house.

5. The petition may be opposed by the respondent also on the ground that the dissolution of marriage will result in grave financial and other hardship on them.

6. The court shall consider all circumstances including the age, health, custom, social status and stima earning capacity, financial resourses, financial obligation and the financial position, mental and physical agony and the issues and liabilities, dependants, etc. of the parties and the court while awarding a decree for dissolution of marriage.

(1) Shall also order the adequate provisions for the maintenance of the children born out of the marriage and of the heirs as mentioned in the Hindu Seccession Act, 1956 on the assumption that the respondent has died and succession has opened.

(2) Shall also order the division of the property of both the spouses of the parties and award their respective shares to each of the heirs of Class I as mentioned in Hindu Succession Act, 1980 with the condition that the wife shall get 10% share more than that of the husband.

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(3) In Section 15 of the present Act, the following proviso be added at its end:

"Provided that it shall not be lawful for the person applying for divorce to marry again unless at the date of such marriage at least three years have elapsed from the date of the decree for divorce any person marrying in contravention of this rule, shall liable for bigamy.

(4) Section 24 be amended by adding the following Clause in the end:

"the party shall be bound to deposit the sum as ordered/directed by the court and the consequence of disobedience of the order of the court shall be to get his suit application dismissed in the case of the plaintiff and to get the defence struck off in the case of this defendant respondent"

B. The Indian Divorce Act, 1869, be amended suitably to incorporate the mode of dissolution of marriage irretrievably as follows:

1. Section 10 be amended as follows:

(A) Para 1 of present section be numbered as sub-section (1).

(B) Para 2 of present section be numbered as sub-section (2).

(C) The following para be added as sub-section (3) "Any party to the marriage may present petition for dissolution of marriage by a decree of divorce of the ground that their marriage has broken down irretrievably on account of their living separately for a continuous period of seven years immediately preceding the presentation of the petition.

(D) The following para added as sub section (4):

"The court shall consider all the circumstances including the age, health, custom, social status, conduct, earning issues, liabilities, dependants etc. of the parties and the court

...6/-

while awarding a decree for dissolution of marriage.

(a) Shall also order the adequate provision for the maintenance of the children born out of marriage and dependants.

(b) shall also order the division of the property of both the spouses and award their respective shares to each of the heir with the condition on that the wife gets 10% more than the husband.

(E) Present para 3 of section be renumbered as sub-section (5).

C. The Code of Criminal Procedure 1973 be amended as follows:-

1. In Section 125 sub-section (4) & (5) be added as follows:-

(4) the court shall direct the non-petitioner to deposit such sum in the court by way of interim maintenance along with the summons for appearance and the defence of the non-petitioner shall be struck down for non-complying with the order.

(5) the petitioner shall be entitled to receive the sum as deposited by the non-petitioner in compliance to an order passed under sub-section (4) on such terms and security as the court directs."

(ORIGINAL IN HINDI)
(ENGLISH TRANSLATION)

At Gwalior the Seminar was to be concluded on the third day on 2nd July. This meeting was presided over by Dr. Ram Krishan Gupta, Head of the Department of Sociology of Jabalpur University. The questionnaire sent by the Joint Committee on the Marriage Laws (Amendment) Bill, 1981 was read out today and every question was discussed. The following conclusions were drawn.

1. Divorce divides a family, therefore the name of Marriage Act be changed to Family Laws. The fulfilment of marriage signifise a men's entry into family. Therefore it is not possible to break the bonds of a marriage.

2. To fix irrevocable point is not possible. This point differs from person to person. At the same time a person may consider a particular situation as irrevocable, the same situation may not be considered irrevocable under different circumstances.

3. Instead of adding a new Clause 13(C) in the amended Bill 13(b) may be amended and the irrevocable point may be allowed to be brought before the court on the consent of both or either of the parties.

4. One more basis should not be added in addition to other basis which have been given for divorce. Because on this basis neither of the parties can be forced to explain reason.

All the above-mentioned points were put up for discussion. But the intellectuals present there were of the opinion that if none of the husband or the wife is willing to live together such a situation should be considered as irrevocable and they may be allowed to live separately.

5. The workshop also took the decision that three years period is long. If there are chances that the case might take a long time the period may be reduced to one year.

6. It was also decided that there is need for expeditious decision in these cases, therefore, family courts similar to juvenile courts may be constituted which should be headed by a judge of the rank of a district judge and as far as possible he should be an elderly person.

...8/-

7. Council of judges should include psychologists, sociologists and social reformers for these family courts. There should be representation of both men and women in these councils.

8. Procreation is a natural culminature of marriage. Therefore husband, wife and the child should invariably be included as parties. If the child is minor the court may grant protection and appoint a counsel for him.

9. The constitution of government or non-government reconcilliation (agencies) before the issue of decree is considered as most important. The decree of revocation of marriage can be granted only after its efforts prove failure.

10. The workshop was also of the opinion that every marriage should be registered and a licence fee be collected. This would enable the government to raise a fund from which a fixed amount can be awarded to husband, wife and their children in case of a divorce.

11. In connection with the succession right the controversy continued whether a divorced wife be granted a right to paternal property or not. The right of children on paternal property was approved. But there is possibility of fraud if a divorced wife is given a right to the property of the parents. The three day seminar was conducted by Shri Muneendra Mohan Chaturvedi, the Head of the Sociology Department. Shri Hari Ram Verma, Principal, Madhav College, Shri Bhagwati Prasad Sinhal, Chairman, Central India Education Committee and Shri Bhalchandra Khanwalkar, Principal, Parvati Bai Gokhale Science College were present in the seminar.

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ग्वालियर 2 जुलाई को तीसरे दिन की इस गोष्ठी का समापन होना था । इस गोष्ठी की अध्यक्षता जबलपुर विश्वविद्यालय के समाज-शास्त्र विभाग के अध्यक्ष डा० रामकृष्ण गुप्ता ने की । आज के दिन पार्लियामेंट की ज्वाइंट कमेटी, आन मैरिज लॉ एमेंडमेंट बिल, 1981 के द्वारा भेजे गये प्रश्नावली को पढ़ा गया और प्रत्येक प्रश्न पर विचार हुआ । निम्नांकित विचार सामने आये ।

1. तलाक गृहस्थी को तोडने वाला है । इसलिये मैरिज एक्टस का नाम पैनिली लॉज रखा जाये । विवाह का पूर्ण होना गृहस्थी में प्रवेश करना है । इसलिये विवाह का बन्धन तोड़ना संभव नहीं है ।
2. असमाधेय बिन्दु का निर्धारण करना संभव नहीं है । यह बिन्दू व्यक्ति-व्यक्ति पर बदलता रहता है । साथ ही एक व्यक्ति एक समय में जिस परिस्थिति को असमाधेय मानता है, दूसरी परिस्थिति में उसको असमाधेय नहीं मानता ।
3. संशोधन में 13सी जोडने के स्थान पर 13 बी में ही संशोधन किया जावे और असमाधेय बिन्दू को या तो दोनों की राय या एक की राय होने पर भी न्यायालय में जाने दिया जावे ।
4. तलाक के जो बहुत से आधार दिये हैं उसमें यह एक और आधार प्रदान करना अनुचित होगा । इस आधार में कोई भी कारण बताने के लिये पक्षकार को बाध्य नहीं किया जा सकता ।

उपरोक्त सारी बातें विचार करने के लिये प्रस्तुत हुई । किन्तु उपस्थित विद्वत जनों का यह मत था कि यदि पति और पत्नी में से कोई भी साथ-साथ नहीं रहना चाहता है तो उस अवस्था को असमाधेय स्थिति माना जावे और उन्हें अलग रहने की छूट दी जावें ।

5. वर्ड शाप में यह भी निर्णय लिया कि तीन वर्ष की अवधि अधिक है । यदि मुकदमा लम्बे समय लगने की गुंजाइश होगी तो यह अवधि अधिक है । इसे एक वर्ष दिया जावे ।

6. यह भी निर्णय लिया गया कि ऐसे प्रकरणों में शीघ्र न्याय की आवश्यकता है इसलिये बाल न्यायालय के समान ही पैमिली कोर्ट बनाये जायें । जिसका प्रमुख न्यायाधीश डी० जे० रैंक का होना चाहिये और यथा संभव अधिक आयु का होना चाहिये ।

7. इस पैमिली कोर्ट में मनोवैज्ञानिक, समाजशास्त्री और समाज सुधारकों में से लोगों को छांटकर न्यायाधीश मंडल का निर्माण करना चाहिये । इसमें पुरूष और महिलाओं दोनों का ही प्रतिनिधित्व होना चाहिये ।

8. विवाह को स्वाभाविकता परिणिति में संतुष्टि को पक्षकार के रूप में अनिवार्यत: बनाना चाहिये । यदि संतान अवयस्क हैं तो न्यायालय उनको संरक्षण दे और उनके लिये काउन्सिल नियुक्त करें ।

9. तलाक की डिग्री देने के पूर्व सरकारी अथवा गैर सरकारी कन्सीलियेशन (एजेन्सीज) का निर्माण अत्यन्त आवश्यक माना गया है । इस प्रयत्न के असफल होने के बाद ही विवाह विच्छेद की डिग्री प्रदान की जा सकती है ।

10. कार्यशाला में यह भी विचार आया कि प्रत्येक विवाह का पंजीयन किया जावे और उसके लाइसेंस फीस वसूल की जावे, इसलिए एक फंड निर्माण किया जावे जिससे विवाह विच्छेद की व्यवस्था में शासन एक निश्चित रकम पति पत्नी और उनके बच्चों को प्रदान करें ।

11. उत्तराधिकार के संबंध में यह विवाद बना रहा कि तलाक शुदा पत्नी को पैत्रिक संपत्ति में अधिकार दिया जावे या नहीं दिया जावे । संतानों को पैत्रिक संपत्ति में अधिकार रखने की बात रखी गई । किन्तु तलाक शुदा पत्नी को पैत्रिक संपत्ति में अधिकार देने पर धोखाधड़ी होने की संभावना है ।

तीनों दिवस की गोष्ठी का संचालन समाजशास्त्र विभाग के अध्यक्ष, श्री मुनीन्द्र मोहन चतुर्वेदी जी ने किया, श्री हरिराम वर्मा, प्राचार्य माधव महाविद्यालय, श्री भगवती प्रसाद सिंहल, अध्यक्ष मध्य भारत शिक्षा समिति एवं श्री भालचन्द्र खानवलकर प्राचार्य पार्वती बाई गोखले विज्ञान महाविद्यालय तीनों दिवस गोष्ठी में उपस्थित रहे ।

(1)

CONFIDENTIAL (10)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 1

[Representation received from Shri Surinderpal Singh, Sirsa (Haryana).]

I pray for amendment in Section 3 and 5 of the Hindu Marriage Act which allow marriages between cousins (i.e. Marriage between Maternal uncle's/Sister's son, or the daughter and son of two sisters) These type of marriages are most damaging for the following reasons:-

/daughter with the son of his maternal uncle's)

1. By these type of relations, the mutual affection comes to an end;

2. They create inferiority complex in the mind and lower down the moralels;

3. The children out of such wedlocks are not properly brought up;

4. The snouses hesitate in disclosing such type of relations to others though such relations are open secret;

It is argued in favour of such marriages that they are the outcome of the custom governing Hindus. The Hindu society, which has the recognition of Manu Maharaj, does not allow such type of relations. The children out of such marriages do develop to the desirable extent.

There are not two thoughts that the marriage is purely a personal matter of an individual, but it may be remembered that it is also social. These type of marriages are solemnized in order to absolve of the liabilities, out of greed, and to save money easily. The Government of India and Hindu Society would ban such like marriages and the President of India would give his assent. Arguments can be made in favour and against a particular matter, but I believe that the Committee of fourteen members of Lok Sabha and Seven of Rajya Sabha which the Government of India has constituted would recommend for legal ban on such like marriages and to make necessary amendments in Sections 3 and 5 of the Hindu Marriage Act, 1955.

CONFIDENTIAL (11) (2)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 2

[Representation received from Shri Dally Banrjee, C/o P. Ganguly, 81, B.T. Road, Calcutta-2.]

A section of people of the country are very much anxiously waiting to see the amendment to the provision of Divorce under Matrimonial Act of the Country. It is praise worthy to mention that you have been considering the humanitarian ground while bringing a bill on the issue which was introduced in the year 1980 in the Parliament.

But two years elapsed no further action on this bill has yet been taken. Many people of your country including myself have been suffering for more than 18 years which is very much painful and disgraceful state of affairs.

However you are very much requested kindly do the needful at the coming session and for this act of kindness I shall remain grateful to you.

CONFIDENTIAL

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 3

[Representation received from Shri Mohan Lal, Accountant, Ludhiana.]

It is published that a question has been raised in the Supreme Court of India by a petitioner in his petition that the article 14 of the Indian Constitution provides equal fundamental social rights and then why a Muslim of India is allowed to marry with four wives at a time and a Yahudi of India is allowed to marry with with two wives at a time and why a Hindu is allowed to marry with only one wife at a time.

So, it is proved that "The Hindu Marriage Act, 1955" is wrong. Your goodself is requested to make either a uniform Marriage Law for all Indian citizens or a Hindu should also be allowed to marry more than one wife at a time.

CONFIDENTIAL (13) (4)

JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 4

[Representation received from Mrs. Menaka Patri, Barkatpura, Hyderabad.]

As a Human being as a Woman, sufferer, I desire to bring for your kind consideration, facts concerning the Laws and Bills that are affecting women, who form the majority of thep people's nuclei. Our "Laws and Bills" that speak of safeguarding and protecting the interest of women, are they functioning true to the term? Are they adequate enough to help the aggrieved person? It is the matter which needs consideration. Our law makers and people who are at the helm of affairs of Judiciary, if they really desire the betterment of women and eradicate the Social evils, will have to take necessary suitable action to correct the lacunae in the concerned acts. Laws and Adultery, Alimony, and Bigamy needs consideration and change.

1. At the outset by way of introduction, I wish to state that my husband has deserted me at the time when I needed him most. He left me the very same day my father expired in the year 1980. Befalling the catastrophy I was at my parents house. My unscrupulous, consticenceless husband, taking the advantage of my absence, left with all my belongings from a rented house in which we were living. He left me in a most inhuman manner to my fate. I have nothing to fall back upon and nor any future to look forward to. Incidently, I may mention, that my father was a senior I.A.S. Officer, who worked on various executive positions in the Government of Andhra Pradesh. He retired as Addl. Chief Secretary to Government of Andhra Pradesh.

2. I have filed a private Criminal complaint for maintenance and it is more than two years since the said criminal complaint is still pending. So far I have not received a single paise towards my maintenance. For one reason or the other my case is getting adjourned in Andhra Pradesh courts at Hyderabad. My husband was living in adultery.

...2/-

Now he got married for the second time. During the subsistence of the first marriage, I am advised by the Lawyers in Hyderabad that if a husband is living in adultery, no action can be taken by the wife, under the criminal procedure code or the Indian Penal Code except for the wife to ask divorce under the Hindu Marriage Act. But that cannot be the solution as every wife facing the similar problem does not desire to go in for divorce. How many can, or will be in a position to marry for a second time, following a divorce and settle down? For the person who brings so much misery to his life partner, what punishment is there? Our laws on adultery needs drastic changes. We should adopt to Islamic Laws on adultery, where severe form of punishment is accorded. Whether men or women are equal in the eyes of Law and should be punished equally I do not want to give a divorce, but I want to see that my husband is punished suitably for running my life. I find I am helpless in this regard.

3. I am told that a certificate of second marriage is required to succeed on the ground of bigamy, or to prove the second marriage. But the question which requires consideration is will any husband who gets married second time secretly without a divorce, leave any proof so that his wife can use the same against him in the Court of Law. It is highly impossible to get a certificate of such marriage. Unless the husband is a total fool, nobody will leave any proof. In fact, I have collected sufficient evidence to show that my husband has got married for the second time and I am still helpless.

To put it in brief :-

i) Interim alimony/maintenance should start within three months of filing of the case for maintenance

ii) A case of maintenance should not be kept pending in any court of law for more than six months

iii) The husband must be made to pay maintenance, irrespective of wife's qualifications or even if she has any job.

While deciding the alimony, our law says whether a woman possesses educational qualifications, which means she is capable of earning. But the fact is, at a stage, qualifications of a women does not come to

...3/-

her rescue, as a woman who approaches the court as a last resort to seek justice will be a shattered person, who had undergone all traumatic experiences which affects her Psychologically and physically to a Great extent. Such a woman, whether she will be in a position to support hereself, or do any job? Due to unemployment problem everywhere, getting a job also becomes difficult. However, if the unfortunate victim manages to secure a job, again the question is in her shattered condition how long she will be in a position to retain her job? Maintenance which a woman gets through the Court is such a meagre sum which compels a woman to take up to some job to keep her survival going. These are the points which needs consideration and towards which our law is blind. Women placed in a pathetic condition like this for no fault of theirs', whose burden they are? Whether our law, society, desires that befalling a catastrophe like desertion, broken, marriage, a woman should get herself admitted in an asylum an orphange or put an end to her miserable life. Isn't that a moral and legal duty and responsibility of a husband to maintain his wife whether he stays with her or not?

(iv) If sufficient evidence is brought before the trial court that the husband is married for the second time or is living in adultery with a particular person the burden of proving that he is not married should be on the husband or vice versa.

(v) Lastly, I wish to mention regarding the longstanding tiresome, court proceedings. Dragging on the cases for years which has become a routine, regular feature of the Courts calls for immediate change. Discretion in giving adjournments, if exercised, will help to minimise the undue delays to some extent. The recent suggestions of Hon'ble Justice Shri Y.V. Chandrachud with regard to quick disposal of the cases is welcome one. But so long it is not implemented and executed it hardly is of any help. An aggrieved person who approaches the Court as a last resort to seek Justice will be already a shattered person, and if that person has to face long standing, tiresome, court proceedings, then by the time the person comes out of everything, that person will be almost dead. Then it would be like Justice delayed equal to Justice denied.

The Hindu women in particular and the Indian women in general will be deeply grateful to you, if the changes as suggested by me are taken into consideration and incorporated in the relevant act.

I am herewith enclosing two articles on adultering and alimony which I happened to write sometime ago.

...4/-

(16) 7

ALIMONY

When one comes across the expressions regarding Alimoney like 'alimony laws should be changed and made strict as that causes a burden upon man.' 'Alimony is a source of temptation for a woman to fall out of marriage just to live a freestyle idle life'. Expressions like this and alike makes one start thinking to what moral, human values, human beings are adhering to, where they have eyes to see everything from the point of monetary losses and gains only and calculate everything in terms of money including the human life. When one views alimony as a burden upon man, they should also consider what forces a woman to seek alimony under what circumstances for what reasons.

As a woman, as a human being, I would like to mention some of the facts regarding the aspect of Alimony. The way man reacts and shows his concern in this respect as it pinches his purse but never even once he would like to think about life which gets ruined on account of him.

Whatever be the progress in social and educational fields, women always has a secondary position. She can never be equal to man. The creator himself has designed this subordinate position for her where she can never be totally independent of man. Our woman in obedience to the laws of the nature, the creator gracefully fulfills her role as a wife and as a mother. But her real misery, suffering starts due to man made laws. Men being in the fortunate position consider themselves as superior race and look down upon women as something inferior, who has no individual, human life of her own, who can get discarded as a worn out garment according to his whims and fancies. Her human spirit gets crushed under grinding stone of man made laws and her individual self is forgotten.

The most affected person is our middle class society woman. Higher and Lower strata society women does not get affected by man made laws.

It is the middle class society woman whose condition is most deplorable. Even today, in the age of all progress and advancement her position is the same as it is since ages. Her human spirit is bounded to traditions, principles, higher values in life.

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There are men who never allow their wives to take up to any job as that hurts their male ego. They make her life so dependable on them in every respect, where her very existence becomes a mockery and she is driven to a position of glorified servant. Our indian women who have learnt to accept this imposed slavery never protest against it due to their traditional outlook, family background and higher values, principles in life and seek solace to their defeated souls, to their unrecognised individual human spirit in the promises of so called husbands that they will be looked after like flowers and never to part unto death.

When a man walks out on his wife after years of marriage for his own selfish motives and reasons, she is just left high and dry. She is left without anything to fall back upon and without any future. Befalling catastrophy like desertion by unscrupulous, conscienceless husband her plight is unimaginable. Specially for a woman who has good family background, who lived with status, she can neither go down that level nor can she maintain it either. Though a woman possess educptional qualifications, at a stage that also will not be of any use to her and does not come to her rescue. As there is acute unemployment conditions, competitions, unions and what not, where it is very difficult to get employment. However, if she happens to get a job, she won't be in a position to retain it either, as the impact of the catastrophy, shock will be so great that it leaves the women completely shattered physically and emotionally reducing her to the position of living corpse.

People who share the views, who desire that 'Alimony' laws be made strict as they cause burden upon a man will they in the same manner express as to what punishment should be accorded to men who are responsible for a woman's total ruin, who compells a woman to seek alimony because of his ruthless, inhuman action. In many cases their offence is worse than a murder. For a murderer the punishment is in accordance with law. But for a person who accords a living death to another individual, sparing mere physical existence of the unfortunate victim, what punishment is there. How can anyone compare a woman's life in terms of money? The meagre amount which she gets in the form of maintenance, will that sustain her life, will that help her regain all that she is forced to part with. The ruthless action of man many a times leaves no scope for a woman to pick-up threads in her life again. She just cannot hope of any family life, cannot think of another marriage, never be there smiles in her life.

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It is really sad and humiliating to see how men attribute reasons for seeking alimony like women get tempted for the same in order to lead a freestyle idle life. Well, there cannot be anything more ridiculous than to think in this term. By and large no woman would desire to walk out on her marriage for the sake of alimony, unless in exceptional cases if she is married to a person who is very wealthy, a millionaire or a multi-millionaire.

There are some women who consider themselves as high class society women, have money at their disposal hardly they realise that money doesn't make a person, it is the character that counts. It is really unfortunate to see these women taking to Western Culture, life style in the name of being social, modern in order to lead a freestyle idle life. They become cause of another womans misery. They get ruined themselves and ruin others. However my concern is not for such woman as they are disgrace to be /called women and also the percentage of such women is very negligible.

I would like to mention another aspect concerning alimony that is mostly men react fervently and feversihly against parting even with the meagre sum unless they are forced through the courts. They seek ways and means to avoid giving alimony and their conscience does not prick them that they are responsible for a person's total ruin. Man behaves as if he is doing some favour, giving alms but hardly he realises the fact that it is the moral duty, legal responsibility of a husband to maintain his wife whether he stays with her or not.

The two human agencies who can tackle and do justice to women in this social problem, one is society and the other one is judiciary.

The present day society is drifting towards worse, towards degeneration in respect of ethical, moral, human values where conscience, compassion towards another human being is forgotten. It is the moral duty responsibility of our society to take steps, measures to prevent this degeneration to the possible extent. The roots of higher values should be ingrained in a person from an early stage of life, then only he will have respect for the life of another individual and learn to live as a human being.

It is unfortunate that mostly people who adopt to destruction, crooked ways they disguise themselves behind the veil of philosophy and religion. They apply big kumkum on their foreheads, chant loud mantras and visit

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temples, all this is just a hoax. Their philosophy and religion is so hollow, only skin deep. They are the people who are cut throats, spineless characters. What a mockery. By their wonderful deeds even they will make the creator to bow down his head to see his own creation in this way. Our society should come forward to expose, unmask such realised souls in order to save innocent lives. So also people who have heart to sympathise with the unfortunate woman, instead of showing mere sympathy, they should boldly accord social byycott to such undesirable callous people and put them to shame. That will certainly bear some effect.

If somebody else's house is on fire, why should we bother, this kind of feeling, attitude should not be there with the people. Every man in society must become conscious to the fact that he is a father, brother to some woman. If similar catstrophy be on fall their own dear one's, how they would feel about it, how they would react to that.

Our judiciary, the temple of justice which stands to protect and safeguard the interests and rights of women should function true to the term, without any prejudices in fear or favour. It is not the alimony laws which should be made strict as it is just a meagre sum which will not be sufficient even for a person/bare existance. /for On the contrary it is the matrimonial laws which need to be made very strict, implemented and executed in toto. Then only many a marriages and innocent lives will be saved from the catastrophies. Another thing the lengthy tiresome court procedures should be changed to speedy disposal of cases to the possible extent. The woman who approaches the court as a last resort to seek justice will be a shattered person who has undergone mental agony and suffering. If she is made to undergo lengthy court procedures, by the time she comes out of everything, she is almost dead. Then it would be like justice delayed equally to justice denied. Unless and until human beings with conscience become conscious of their duties and responsibilities, this social problem concerning women will ever remain the same.

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Is Judiciary - Temple of Justice - is blessing the Women by its blessings in real sense of term:

This is in reference to an article recently published in 'Femina', Times of India Publication, on laws of Adultry written by one Mrs. Nalini Chitambaram, an Income-tax lawyer of Mdras, who comes from a lawyer's family. I would like to convey my heart felt feelings and congratulate Mrs. Nalini for her bold matter of fact article. Such articles not only brings the naked truth regarding the human life, higher values and principles in front of our dormant, ignorant masses but also brings them to the realms of realities in knowing the women to raise their voices and express their resentment and heart burn towards the injustices of which women are always victims.

I very much agree to what Mrs. Nalini has written. Really if every woman has a mind like Mrs. Nalini and are bold enough to come out with their resentments towards injustice raising their voices to the extent of forcing our law makers to pass laws to protect personal life of women in absolute and in real sense, that would bring harmony in their lives.

I would like to make a mention here regarding penal Code Section 497 dealing with laws on Adultry well, it is very much discriminatory in nature towards women. In no way it safeguards the interests of women. According to Section 497, a man can move the matter in the court but whereas a woman cannot do so, even when she is in the knowledge of her husband's taking to Prostitutes and keeping a mistress due to indiscriminatory laws. Man in order to cover up his own misdeeds by initiating reckless, scnadalous allegations in the court like that of adultry against a woman even when it is devoid of any truth and proved false and baseless causes grevious injury to a woman by defaming her in public. By doing so as social stigma gets attached to her name which is damaging to her very person in all respects. But what a mockery, that even when her husband starts living with a mistress or gets married secretly many times he manages to go scot free.

We are so proud of our democracy, we talk so much about democracy, equality of Women's status and their rights, Women's lib this and what not. But are we having all that in real sense of the term. Where we are drifting to? Whether it is democracy or anarchy in respect of women. Our preamble reads that our Govt. is by the people, of the people and for the people. But we, women who form the major part of these people's Nucleu where we stand? Whether our legislature, Judiciary is taking any cognisance of women's resentments regarding the injustices meted out to them and discriminatory

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laws. Why there is so much discrimination involving man and a woman. Why there are double standards with respect of bills and laws whose existence is proudly announced for protecting women and safeguarding their interests. Are these bills and laws are helping in wiping out tears from women's eyes? It is nothing but a eye wash.

Many an innocent lives are getting crushed due to unscrupulous husbands and mother-in-laws. Even today women are treated in their husbands homes like that of women in 16th century. They are subjected to beating, humiliation, untold misery and suffering. If a woman shows her resentment towards her husband's unfaithfulness and his falling out of sacred bonds of marriage, she is just thrown out. Her fate is unimaginable. This results even in desertion of a wife by her conscienceless husband, leaving her miercilessly to her fate, where it becomes just impossible for the unfortunate victim to pick up the threads again in her life.

When conscienceless husband's and crooked mother-in-laws turn into devils, the only alternative left for a woman who falls a victim either to resign herself to her fate or put an end to her life. In any case if a woman approaches the court as a last resort for justice, our laws are such that there also her interests are not safeguarded. We can witness a degrading human drama to which a man is capable of falling during the court case, where shamelessly/woman, her justifiable right even for maintenance. The amount awarded to her after a great struggle is so meagre that it is not sufficient even for her bare existence.

/he puts up with fights by tooth & nails just in order to deny

Now the need of hour calls for bold and collective resentment and efforts from women in order to see that the matrimonial laws are implemented and executed in strict real sense of term as the existing laws have no validity as they do not safeguard or protect the interest of women in true sense of term.

Now-a-days the alarming increase in the suicides by young house wives, burning of women and desertion of women by their unscrupulous husband's mercilessly and ruthlessly to their fate, all this can be put under control and so many marriages, many a broken homes will be saved from catastrophy if matrimonial laws are made strict and executed in toto. Unless man is tamed by strict laws, many a times he proves himself no better than a beast. The punishment awarded to the guilty should not be simple, but a severe one like imprisonment as the victim involved is killed psychologically and socially as such, physical existence of that person has no meaning in true sense. Then only many will learn to respect and realise the value of his life partner and her life. He will not dare to fall out of the sacred bondage of marriage. There should not be double standards in respect of laws. Whoever is guilty whether man or a woman should be punished in a same manner.

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Our Judiciary and law makers if they keep themselves free from all prejudices and lend their eyes and ears to untold miseries and sufferings of women and frame strict laws accordingly. By doing so they will be rendering invaluable, greatest service not only to women but humanity as a whole.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 5

[Representation received from Shri Shiv Dayal, Retd. Chief Justice M.P., Gwalior.]

The principal object of the Hindu Marriage Act, 1955 is to make a Hindu marriage monogamous, so that neither party can validly contract a second marriage during the lifetime of the husband/wife.

This is enshrined in Section 17 of the Hindu Marriage Act, 1955 which enacts that a marriage solemnised after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living.

It is for the removal of ambiguity and with a view to make the section more explicit and effective that I suggest the words "between two Hindus" to be deleted, and the word "Hindu" to be added before the words "husband or wife" in Section 17 of the Hindu Marriage Act, 1955.

Existing Section 17	Amended Section 17
17. Any marriage bewteen two Hindus solemnised after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code shall apply accordingly.	17. Any marriage solemnised after the commencement of this Act is void if at the date of such marriage either party had a Hindu husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code shall apply accordingly.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 6

[Representation received from Shri Ramesh Goel, New Delhi.]

There are large number of cases pending in the courts for seeking divorce and years and years have elapsed without decision on one pretext or the other may be due to the fault of a wife or a husband. Laws delays are proverbial but perhaps in no other sphere is the sting of delay so pinching than in matters pertaining to matrimonial suits. The husbands even in the most genuine cases had no legal remedy and live with a limped marriage. Extra legally, however, they form an alliance but that only add to the bitterness of the matrimonial relations. In fact that is no substitute for a smooth, peaceful and harmonious life. Often petitions have ultimately been dismissed after decades of litigation. Courts have with a heavy heart though given decrees which are absolutely meaningless which neither legally serve the tie nor by magic can bring about a reconciliation simply because the ground is not proved or some other technical ground. In certain cases, it becomes virtually impossible either for a husband or a wife to live together but one of them is adamant to not to divorce the other merely for the sake of harassment and live separately for years but is not willing to compromise at any cost.

While the cases go on and husband or wife does not want to compromise, life is almost over and so are his funds. With the passage of each day his/her prospects of resettlement in life are fading. The lawyers profession is so commercialised that even he would not hesitate to delay the matter, as he is only concerned with his fees and nothing else. Besides a busy lawyer has so many matters and courts to attend to that it becomes a valid pretext for adjournment. Worse, however is the tactics adopted by the opposite party to delay the matters and thereby harass the petitioner. It has been noticed that even in most genuine cases the petitioner is not able to prove the guilt because of certain circumstances and prefers to live alone than to compromise i.e. to live with the other party. The result is that cases get on for years and years adding only unnecessarily embarrassment, tension and expenditure to

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all concerned. It is high time that a marriage should not be allowed to limp for long and such matters be expeditiously decided.

Recently views of social organisations were sought by Secy. Rajya Sabha and most of the organisations are of the view that divorce cases be treated expeditiously and those who are living separately for more than 3 years be treated as divorcees.

May, I appeal you all to do the utmost best to get the "Marriage amendment Bill - irretrievable breakdown in marriage Bill" passed which is pending in the House for a long time. Innumerable people in distress are eagerly looking forward to the passage of this Bill. With each Parliamentary Session, their hopes revive.

The most disgusting phenomenon, however, is the inordinate delay in the procedure. Where one party files and the other contests and the state of affairs is terrible. Above all courts should handle matrimonial cases in a human and not mechanical manner. The prime concern in their mind should be the future of the marriage and not the spirit of punishment or reward for any party. If the court is convinced that fault or no fault - the two can't live together, it should lose no time to set the parties free so that they can plan their future while there is some bit of life left in them after the tormenting and shattering episode.

To remedy this situation to an extent there is only one solution to this problem and that is to pass the "Marriage Amendment Bill - irretrievable breakdown in Marriage" immediately so that sufferers can get a chance to settle once again in life and that will be a great service to humanity.

Some people are of the view that it is always the husband who wants divorce. There is no basis to presume that it is always the husband who wants a divorce. To-day's emancipated woman is no longer ready to be subservient to her husband and files divorce suits against cruel, dominated, impotent and homo-sexual husband. They would benefit equally from the proposed law. Moreover, if the marriage fails and the couple live separately, the wife gains nothing by not granting the husband a divorce. The loneliness and social ostracism are not solved by living behind a false facade of responsibility of not being a divorcee but a deserted wife.

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The situation of divorce is perhaps better. Unending divorce suits do not deter people from separation. The success or failure of a marriage does not depend on the complexity or simplicity of divorce laws. It is baseless to presume that easy divorce laws would result in more broken marriages. People marry to enjoy the comforts of home and hearth and not to fight leval battles. One takes recourse to divorce in extreme cases. The problem of rehabilitation of divorced women arises because by the time a case is through various courts, the woman is mental physical wreck and too old for remarriage. If divorces were easy and quick, a woman would still be of a remarriageable age and many of them would be able to settle down with compatiable husbands. There is an imperative need to make divorce easy and quick. One divorce could lead to two happy homes.

With these words, once again, it is suggested that serious efforts be made to get the bill on irretrievable breakdown in marriage be passed immediately on priority basis to relieve sufferers from further agony and harrassment and those couples who are not living under one roof for the last three years be treated as divorcees and courts be given orders with immediate effect in such cases.

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JOINT COMMITTEE ON THE MARRIAGE LAWS (AMENDMENT) BILL, 1981.

REPRESENTATION NO. 7

[Representation received from Ex-General Secretary, Meerut Ex-Service Men Association, Meerut Cantt.]

With reference to the marriage laws (Amendment) Bill 1981, introduced in the Lok Sabha on Jan. 27, 1981 and yet the growing number of suicides by women. Divorce cases and Guardianship of minors need immediate attention of the Govt. to further liberalise these laws and amend the old Act suitably to confirm to the present modern society of our socialistic and democratic welfare demands through special Family Courts. Hence these suggestions:-

1. The above proposed Bill provides that once the court is satisfied that the parties to the marriage have lived apart for a continuous period of not less than 3 years, it will hold the marriage "to have broken down irretrievably". The period be reduced to one year or upward instead of 3 years as proposed in the Bill.

2. Seperation Period: As per 1981 Amendment Bill, another provision is that a husband and a wife shall be treated as living apart unless they are living with each other in the same house-hold. Hence an evidence and a documentary proof shall be admitted as solid proof to recognise judicial seperation for subsequent divorce purposes. This shall certainly simplify the combursum, procedure for early settlement of such cases by the courts.

3. Divorce: Under clause 13(1) of the Hindu Marriage Act, in addition to its sub-clauses already laid, following grounds may also be considered for additions:-

(i) Harrassment, Maltreatments and Meanness.

(ii) Mental torturing and modesty discriminations

(iii) Dangers on life and dowery demand threats.

(iv) Mis-trust and strained relations for one year or above.

5. Conditions of Hindu Marriages: Section 5 of Hindu Marriage Act disqualifies a person (Hindu) from marrying again during the life time of his first wife.

This question was raised in a petition in the Supreme Court challenging Section 5 (Times of India dated 14.9.1982 refers) to struck it down under the provision of Article 14 of the Constitution which guarantees equality before law in either case. Needs consideration for Law reforms.